

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF VIRGINIA  
3 Roanoke Division

4 UNITED STATES OF AMERICA, Criminal No. 7:07cr00048

5  
6 Vs. Roanoke, Virginia

7 TED JAMES JOHNSON, JR.,

8 Defendant. October 10, 2008

9  
10 TRANSCRIPT OF TRIAL PROCEEDINGS  
11 BEFORE THE HONORABLE SAMUEL G. WILSON,  
12 UNITED STATES DISTRICT JUDGE, and a Jury.

13 APPEARANCES:

14 For the United States: U.S. Attorney's Office  
15 JENNIE L.M. WAERING, ESQ.  
16 P.O. Box 1709  
Roanoke, VA 24008-1709

17 U.S. Dept. Of Justice  
18 DAVID A. BYBEE, ESQ.  
1400 New York Ave.  
Washington, DC 20530

19 For the Defendant: ANTHONY F. ANDERSON, ESQ.  
20 MELISSA FRIEDMAN, ESQ.  
21 P.O. Box 1525  
Roanoke, VA 24016

22 Court Reporter: Sonia Ferris, RPR  
23 U.S. Court Reporter  
255 W. Main St. Room 304  
Charlottesville, VA 22902  
24 434-296-9284

25 Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 THE COURT: I have been informed by counsel  
2 that there's some issues that have arisen in relation to  
3 the representation of Mr. Johnson.

4 Mr. Anderson?

5 MR. ANDERSON: May I approach?

6 Good morning again, Your Honor. When I  
7 entered the courtroom this morning, I met with Mr.  
8 Johnson and a few of his family. He has indicated to me  
9 this morning that he would like to discharge me as  
10 counsel, for reasons I will let him state to the Court,  
11 if it's all right with the Court.

12 THE COURT: Thank you, Mr. Anderson.

13 Mr. Johnson, tell me whatever it is you want  
14 to tell me, sir.

15 THE DEFENDANT: Yes, sir, Your Honor.

16 On October 7th, I believe was Tuesday, Dr.  
17 E. Scott Geller, testified in court here as the  
18 government witness. After he finished his testimony,  
19 there was some discussion, of course, about books  
20 concerning psychology and other areas of interest to my  
21 attorney, Mr. Anderson, as well as to Dr. Geller. Dr.  
22 Geller was a distinguished professor of psychology at  
23 Virginia Tech and there was discussion concerning these  
24 books and interests.

25 After Dr. Geller finished his testimony, he

1    went back beyond this place here into where the gallery  
2    is and my attorney, Mr. Anderson, went back and talked  
3    to Dr. Geller and talked to him a little bit about the  
4    books that he'd written. I assume this is in an e-mail.  
5    From that discussion, my attorney, Mr. Anderson, asked  
6    Dr. Geller if he would sign one of Dr. Geller's books  
7    that he had written. From that, there was a further  
8    discussion where my attorney began to discuss with Dr.  
9    Geller about his client. Geller sent two e-mails out.  
10   The first e-mail indicated that Mr. Anderson had said to  
11   him that "my client is guilty and will receive 15 years  
12   as a result of his guilt when this is all said and  
13   done."

14                   Subsequent to that, on October 7, and Your  
15   Honor, I have to ask that you would please take into  
16   consideration I haven't seen the hard copies of these  
17   e-mails, I've only seen the first e-mail sent by Dr.  
18   Geller which I think was sent in the afternoon of  
19   October 7 after he had left this courtroom.

20                   THE COURT: Let me just say for the record  
21   that before we came in here on this, those two e-mails  
22   were shared with me so that I would have an  
23   understanding what the e-mails were. So I have actually  
24   seen those e-mails.

25                   Go ahead.

1 THE DEFENDANT: Thank you, sir. I haven't.  
2 I think Mr. Anderson maybe had it in his cell phone, had  
3 one of those e-mails that I was not able to see it all,  
4 but I saw just bits and pieces of it.

5 The first e-mail went out to several people.  
6 I'm not quite sure how many. But in the first list, the  
7 one that the government was aware of and eventually that  
8 my attorney was aware of, I think there are  
9 approximately 20 recipients of that e-mail. Just the  
10 part I saw was talking about the highlight of Dr.  
11 Geller's day was when TJ, referring to myself, the  
12 defendant, attorney's asked for his autograph on this  
13 book and started talking about I had a future of a  
14 possible 15 years in prison.

15 THE COURT: The second e-mail, Mr. Johnson,  
16 that was shared with me, indicated that the way in which  
17 Dr. Geller had positioned the matter was essentially not  
18 correct and he retracted in the second e-mail what he  
19 had -- the way he had said it in the first. I think  
20 it's important to see that second e-mail because the  
21 second e-mail was essentially a retraction of the first.

22 Go ahead.

23 THE DEFENDANT: I was aware of the  
24 retraction of the second e-mail. I was also aware of  
25 the fact just from my attorney's communication to me the

1 following day, on October 8th, was the first I found out  
2 about the first e-mail and at that time, Mr. Anderson  
3 advised me this e-mail had gone out and it was one of  
4 those things -- we talked about the book signing was the  
5 highlight of his day and also the fact that Mr. Anderson  
6 said that I was guilty. Later, there was a discussion,  
7 they said, in the second e-mail that he said in some  
8 way, to paraphrase, that he had misstated himself and he  
9 meant to say if I were to be found guilty, then I would  
10 receive 15 years.

11 The second communication from my  
12 understanding from Mr. Anderson was a result of the  
13 government getting in touch with Dr. Geller and saying  
14 if this is not corrected or if it's not modified -- I'm  
15 not quite sure of the language they used because I don't  
16 think they were there for the communications between  
17 Anderson and Geller, but they said if this is not  
18 corrected, you possibly could be indicted for  
19 obstructing justice. With that communication --

20 THE COURT: How do you know all of this  
21 about being indicted and all that kind of stuff?

22 THE DEFENDANT: Mr. Anderson advised me the  
23 government said they considered that as a possibility if  
24 he didn't do a retraction or modification on that  
25 original e-mail.

1           Once again, Your Honor, I'm not an attorney.  
2   I've never been in a federal thing other than to  
3   bankruptcy, but when Mr. Anderson mentioned this to me  
4   and he was somewhat upset about it or irritated by it,  
5   but he went on to tell me supposedly if Dr. Geller  
6   didn't do some sort of a correction on his original  
7   e-mail that there would be some problems for Dr. Geller.  
8   At least that's what the indication was from the federal  
9   government.

10           From that, there are several things, but the  
11   first thing I guess I want to say is that we didn't have  
12   court yesterday. I thought about that a long time. So  
13   then when I asked Mr. Anderson when he got here this  
14   morning if I could meet with him along with my family to  
15   discuss this, I said, I haven't seen the e-mails, only  
16   from what you have said, and that's when I first saw the  
17   first e-mail, Your Honor. I said, I think this should be  
18   brought to the Court's attention. I asked, him had it  
19   been brought to the Court's attention either by the  
20   United States -- because the United States got a copy of  
21   that e-mail. Once again, that's my understanding and  
22   I'm not trying to do hearsay. I'm just trying to say  
23   from what I've seen. One of the prosecuting attorneys  
24   received it, maybe the FBI received it. So there was no  
25   question that the government had seen it, but nobody,

1 from the time it was seen, and maybe they don't have any  
2 obligation other than to advise Mr. Anderson and Mr.  
3 Anderson advised me on the 8th sometime during the day,  
4 my goodness, I just heard Geller sent this e-mail out.

5 The bottom line is when eventually I met  
6 with Tony this morning and said I want a copy of his  
7 e-mail and retraction, I want to see that, from hard  
8 copy, I wanted to see it and at that point, it was the  
9 first time that I said, Mr. Anderson, I think it's  
10 extremely important we let the Court know about this.  
11 There are witnesses that received this. It's been sent  
12 out to a lot of people --

13 THE COURT: I've got a jury back here.  
14 Let's finish this conversation and make sure we fully  
15 air what we need to air. I've seen the e-mail. I've  
16 seen the retraction of the e-mail. What is it that you  
17 think should be done at this juncture?

18 THE DEFENDANT: I don't think I can continue  
19 on with my lawyer representing me when I believe that  
20 even while I'm sitting here just after a witness  
21 completes a testimony that we're getting autographs and  
22 talking about my case and talking about what my future  
23 is and the possibility of whether I'm guilty or not  
24 guilty or if I'm guilty and the number of years I'm  
25 going to get, et cetera, and then even by this morning,

1 once again, undermining my confidence in my attorney,  
2 the fact I said, we need to guess this to His Honor and  
3 to let him know this is going on, this is what has  
4 transpired, and as a result of that, he said, I think  
5 that might be a good idea. It was not even going to be  
6 brought to the Court's attention or be made a part of  
7 the record, once again, undermining my confidence in my  
8 attorney.

9 THE COURT: Frankly, there's no reason,  
10 other than -- your current expression of your  
11 dissatisfaction with counsel will be made a part of the  
12 record. Now it will be made part of the record because  
13 of your dissatisfaction. But that's really the only  
14 thing that I see that it bears on, is your relationship  
15 with your counsel.

16 Let me just say this. I mean, this is --  
17 there are three witnesses left in this case. This has  
18 come up here on the final day of the government's  
19 evidence. The government informed me this morning that  
20 they would be resting their case within several hours.  
21 This comes at the very end.

22 I have listened to the evidence patiently,  
23 as has this jury. I have seen your counsel perform  
24 under what seems to me to be very difficult  
25 circumstances. There is some very challenging testimony



1 that has come out. I have not seen or heard anything  
2 that leads me to believe that it is not -- that he does  
3 not have your highest and best interests in mind in his  
4 handling of everything.

5 Now, in terms of his being friendly, as you  
6 might view it, with a witness, perhaps you have noticed  
7 that he does have that demeanor with witnesses. He  
8 treats them in a kindly fashion, even when he gets  
9 something from him. So the fact that he might have  
10 sought the autograph of a witness is of no particular  
11 moment. In fact, it appears to me one of his strong  
12 suits is the fact that the witnesses, even those that  
13 have been cross-examined by him, like him. Sometimes  
14 that has benefit to the defendant himself. So I don't  
15 really read anything into the fact that he's been  
16 friendly with a witness and got a witness' autograph on  
17 a book. That doesn't tell me anything about his  
18 representation here. Nor have I seen anything under  
19 these very difficult and challenging circumstances that  
20 leads me to believe he does not have your interests at  
21 heart. I've never seen, in any case, him do anything  
22 other than represent to the best of his ability his  
23 clients. I'm not seeing anything here that would lead  
24 me to believe that's not true.

25 That's where I am.

1 THE DEFENDANT: I'm fully appreciative of  
2 the Court's time and the 14 jurors who have been here  
3 now for two weeks. It wasn't a question of Mr. Anderson  
4 being likeable or anything like that. I like him --

5 THE COURT: My point is that sometimes  
6 reading into friendliness with an adverse witness is,  
7 from your perspective, it doesn't say anything. It  
8 really doesn't tell me anything about the quality of his  
9 representation.

10 THE DEFENDANT: I was not really feeling  
11 like that. It undermined my confidence to discuss --  
12 there's a possibility that Geller first says that my  
13 attorney said that I am guilty. The other one said that  
14 I may be guilty and if found guilty. I know both of  
15 them are there and I haven't seen the second one. But it  
16 wasn't him being friendly with the witness that  
17 disturbed me so much as the fact that number one, there  
18 was a discussion about how much time I would receive if  
19 I were found guilty or if I am guilty. Finally, the  
20 discussion of this appeared to be significant enough  
21 that the man was sending out e-mails to 20 something  
22 people including witnesses who had not testified before.  
23 With all that said, even with all that significance, it  
24 was only until this morning we were able to get this on  
25 the record and that's upon my own insistence. I feel

1 those elements alone certainly caused me to have an  
2 undermining of my confidence in Mr. Anderson, who I like  
3 and respect.

4 THE COURT: Again, the standard for me is  
5 the determination as to whether there is, at this  
6 juncture, it would be appropriate for me to declare a  
7 mistrial and begin this all over again and I see nothing  
8 that would lead me to do that. I have not seen any  
9 evidence that he's done anything that was not in your  
10 best interests, again, in this very challenging and  
11 difficult case. There have been witnesses that have  
12 taken the witness stand that frankly, I had no earthly  
13 idea how they could be appropriately cross-examined and  
14 he has handled himself, given the difficult  
15 circumstances, as well as I would think counsel could be  
16 expected. So under those circumstances, I mean, Mr.  
17 Johnson, it just seems to me a mistrial would not be  
18 warranted.

19 Let me hear from the government, the  
20 government's perspective on this before I conclude it  
21 though.

22 MR. BYBEE: Your Honor, although the e-mails  
23 were sent to a select group of investors who are  
24 interested in this case, Mr. Church was not in a  
25 position to see that e-mail when he testified and even

1 if he was, it wouldn't make any difference because all  
2 of the investors already have their opinions about Mr.  
3 Johnson's guilt or innocence in this case. No juror has  
4 heard this or knows anything about it and it would have  
5 no effect at all.

6 THE COURT: Again, I return to this question  
7 of representation and that's the only thing it bears on.  
8 I don't see that it would be appropriate for me to  
9 declare a mistrial and essentially start this lengthy  
10 and complicated trial over again because of that one  
11 incident which, frankly, I don't think demonstrates  
12 anything in terms of an adverse handling of matters by  
13 your counsel.

14 I guess it's best that we go ahead and move  
15 on. As I understand it --

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Johnson.

18 The government has three more witnesses; is  
19 that correct?

20 MR. BYBEE: Yes, sir.

21 THE COURT: Why don't we go ahead and bring  
22 the jury in?

23 COURT SECURITY OFFICER: Your Honor, I have  
24 a note here about the cost of their lunch that I'm going  
25 to pass on to one of the jurors, if that's agreeable.

1 THE COURT: Go ahead.

2 (Jury returned to jury box).

3 Good morning, ladies and gentlemen. I  
4 apologize for us starting a little late. I had some  
5 procedural matters I had to deal with here. I've now  
6 dealt with them and we'll continue.

7 I'm informed by the government that they  
8 only have three remaining witnesses and they intend to  
9 rest their case sometime early today.

10 We will hear from the government's next  
11 witness.

12 Call your next witness.

13 MR. BYBEE: United States calls Danny  
14 Taylor.

15 DANNY TAYLOR, CALLED AS A WITNESS BY THE GOVERNMENT,

16 SWORN

17 DIRECT EXAMINATION

18 BY MR. BYBEE:

19 Q. Would you tell us your name, sir?

20 A. Danny Taylor.

21 Q. Where do you reside, Mr. Taylor?

22 A. Richmond, Virginia.

23 Q. What is your occupation?

24 A. I am a senior investigator and acting chief for  
25 the division of securities with the Virginia State

1 Corporation Commission.

2 Q. What does the Virginia State Corporation  
3 Commission do?

4 A. The State Corporation Commission consists of --  
5 (The Court conferred with the court reporter).

6 BY MR. BYBEE:

7 Q. What does the State Corporation Commission do?

8 A. The State Corporation Commission actually  
9 consists of many different divisions. There's the  
10 insurance division, communications division and there's  
11 my division, which is the division of securities and  
12 retail franchising. Specifically, that division has the  
13 enforcement authority for that of investor protection  
14 through the enforcement of the Virginia Securities Act.

15 Q. Is the Virginia State Corporation Commission, is  
16 it commonly or sometimes referred to as the SCC?

17 A. Yes, sir.

18 Q. That stands for State Corporation Commission?

19 A. Yes, sir.

20 Q. Where is it's office?

21 A. It's office is located in downtown Richmond.

22 Q. What kinds of authority does the State  
23 Corporation Commission have?

24 A. The State Corporation Commission, as a body, is a  
25 civil authority. Again, specifically as to the Virginia

1 Securities Act, we have civil authority only within  
2 that.

3 Q. Can it bring administrative actions against  
4 individuals?

5 A. It can, yes, sir.

6 Q. Can it bring criminal actions against  
7 individuals?

8 A. We have no criminal authority, no, sir.

9 Q. What are your specific responsibilities, Mr.  
10 Taylor?

11 A. My specific role as senior investigator and  
12 acting chief, I'm second in command of our enforcement  
13 section. Specifically, my role as an investigator is to  
14 investigate potential infractions of the Virginia  
15 Securities Act.

16 Q. What training have you had with respect to  
17 securities, generally?

18 A. I've had numerous trainings that I've received  
19 specifically through the Northern American Securities  
20 Administrators Association, which is pretty much the  
21 oversight board for all securities at the state level  
22 throughout the country.

23 Q. Have you taken or taught any securities classes?

24 A. I have taken many securities classes, as well as  
25 taught many securities classes, yes, sir.

1 Q. Does your job require you to make determinations  
2 about when securities are involved in certain financial  
3 transactions?

4 A. Absolutely. It's almost 100 percent of our work  
5 within the enforcement section.

6 Q. Do you make those determinations on behalf of the  
7 State of Virginia?

8 A. Yes, sir, that's correct.

9 MR. BYBEE: Your Honor, at this time, I'm  
10 going to ask that Mr. Taylor be qualified as an expert  
11 in securities.

12 MR. ANDERSON: I have no objection, Your  
13 Honor.

14 THE COURT: Go ahead.

15 BY MR. BYBEE:

16 Q. Mr. Taylor, what laws, in general, govern  
17 securities?

18 A. Securities regulation is governed by both federal  
19 and state law. Specifically from federal law, you have  
20 the Security Acts of 1933 and 1934 and then you have  
21 within individual states, each state has a specific  
22 state securities act. That's where my reference was to  
23 the Virginia Securities Act. So both federal and state  
24 law govern securities.

25 Q. Is the term "security" defined by a statute?



1 A. Yes, sir, it is.

2 Q. Could you display Government's Exhibit 26-3 --  
3 I'm sorry, 26-16, page three. Is the definition -- is  
4 there a federal definition of security, Mr. Taylor?

5 A. Yes, sir. In fact, what you have here on the  
6 slide, this is considered the federal definition under  
7 the 1933 Securities Act.

8 Q. Could you just read that, please?

9 A. Yes, sir.

10 "The term security means any note, stock,  
11 treasury stock, bond, debenture, evidence of  
12 indebtedness, certificate of interest or participation  
13 in any profit sharing agreement, investment contract,  
14 voting trust certificate, any put, call, straddle,  
15 option or privilege on any security, certificate of  
16 deposit or group or index of securities or in general,  
17 any interest or instrument commonly known as a  
18 security."

19 THE COURT: Before you go on, ladies and  
20 gentlemen, at the conclusion of this case, I will give  
21 you instructions that will guide your determination of  
22 these various matters. I'm permitting this evidence come  
23 in at this juncture, but remember, ultimately, the Court  
24 will instruct you as to what a security is. It will be  
25 your responsibility to follow in terms of the law, the

1 law as the Court gives it to you on this matter.

2 BY MR. BYBEE:

3 Q. Mr. Taylor, is a promissory note a security?

4 A. Yes, a promissory note is a security.

5 Q. Is it also an evidence of indebtedness?

6 THE COURT: A promissory note can be a  
7 security.

8 THE WITNESS: Can be security.

9 THE COURT: You said it is a security. It  
10 can be a security.

11 THE WITNESS: Your Honor, I started to  
12 clarify that. Presumption of the law, within securities  
13 law, there's a presumption that any note in a promissory  
14 form is a security.

15 Thank you.

16 THE COURT: Let me just say, ladies and  
17 gentlemen, again, I'm going to be the one to instruct  
18 you on this, not him.

19 Go ahead.

20 BY MR. BYBEE:

21 Q. Is it also evidence of indebtedness?

22 A. Yes, sir.

23 Q. Is it also an investment contract?

24 A. Yes, sir.

25 Q. Mr. Taylor, are you also familiar with the way

1 records are kept at the State Corporation Commission?

2 A. I am, yes, sir.

3 Q. Do you keep investigative files?

4 A. We do.

5 Q. What goes into an investigative file?

6 A. During the course of investigation, any number of  
7 documents, memorandum. Anything gathered during the  
8 course of investigation would go in that file.

9 Q. When something is mailed to the SCC, how is it  
10 processed?

11 A. Generally, we have a secretary who handles all  
12 the incoming mail for our division and generally  
13 speaking, that mail is timed and Bate stamped to show  
14 evidence of receipt.

15 Q. When you say timed, you mean like a date stamp?

16 A. Yes, sir.

17 Q. Why do you do that?

18 A. Just to show receipt of the document, more so  
19 than anything.

20 Q. On occasion, do you also keep envelopes and  
21 mailing labels?

22 A. We do, yes, sir.

23 Q. Do you also have some familiarity with the  
24 particular file that the SCC kept in this case on Mr.  
25 Ted Johnson and Frank Farrier?

1 A. I do, yes, sir.

2 Q. Can you tell us, have you reviewed that file in  
3 it's entirety?

4 A. I have, yes.

5 Q. How did the SCC action against Mr. Johnson get  
6 started?

7 A. It is my understanding, in early January of 2001,  
8 the division of securities, which I work at, had  
9 received what we considered at that point an anonymous  
10 complaint from another broker dealer which was in Giles  
11 County, which was faxed to our division.

12 Q. Did that fax also contain an advertisement?

13 A. It did, yes, sir.

14 Q. Would you display Exhibit 26-1, please?

15 Is this the fax cover page to what you were just  
16 speaking about, Mr. Taylor?

17 A. Yes, sir.

18 Q. Would you go to page two, please?

19 Is that the ad that accompanied that fax?

20 A. That is correct, yes.

21 Q. Now, what was the SCC's response to this fax  
22 communication?

23 THE COURT: Would you put it back on the  
24 screen, please, and highlight again so I can see?

25 Go ahead.

1 BY MR. BYBEE:

2 Q. What was the SCC's response to the fax it  
3 received and this ad?

4 A. Based on having received the copy of this  
5 solicitation for investments, an investigation was  
6 opened by our division after which there was what we  
7 consider a request for information or an RFI, which was  
8 sent by the State Corporation Commission to Mountain  
9 Investments, Ltd.

10 Q. Mr. Taylor, there is a book of exhibits near you.  
11 I'll just tell you that the exhibits that we're  
12 referring to are both in that book and on the screen.  
13 If you'd like to see the paper copy, you may turn to  
14 that exhibit or if you'd like to look at the screen, you  
15 may do that also.

16 This 26-2, is that the initial letter that was  
17 sent by the State Corporation Commission to Mr. Johnson?

18 A. Yes, sir.

19 Q. Could you read this second paragraph, and if  
20 you'll look on the screen, you can see where I'm talking  
21 about? Could you read that paragraph, please?

22 A. "It has come to our attention that Mountain  
23 Investments, Ltd., and/or its agents may have offered or  
24 sold the reference investment opportunity in this state  
25 prior to the required registration. In order to

1 determine whether or not the offer and sale of these  
2 investment opportunities constitutes the sale of a  
3 security as defined in the Virginia Securities Act,  
4 please provide this division the following information."

5 Q. Let me stop you there. Then the letter goes on  
6 to detail certain records that the corporation  
7 commission would like to see.

8 A. Yes, sir.

9 Q. Would you go to page two, please?

10 A. Okay.

11 Q. Following the numbered list, among the items that  
12 the State Corporation Commission --

13 THE COURT: Let me also remind the jury the  
14 defendant is not on trial here for any offense involving  
15 the Commonwealth of Virginia. He's on trial for federal  
16 offenses. I'll instruct you on that at the conclusion  
17 of the case, as well.

18 Go ahead.

19 BY MR. BYBEE:

20 Q. Mr. Taylor, if you would read paragraph six,  
21 please, as an additional item that the State Corporation  
22 Commission was requesting.

23 A. Paragraph six states, "if applicable, please  
24 provide the specific exemptions from registration being  
25 claimed pursuant to section 13.1-514 of the Virginia

1 Securities Act for the sales identified above."

2 Q. Did Mr. Johnson or an attorney representing Mr.  
3 Johnson respond to the SCC's initial letter and these  
4 requests?

5 A. Yes, sir. Mr. Johnson and Mr. Farrier had  
6 obtained counsel by the name of Eugene Derryberry with  
7 the law firm of Gentry Locke Rakes and Moore, and Mr.  
8 Derryberry responded on their behalf.

9 Q. Is this the response from Mr. Derryberry to the  
10 State Corporation Commission, Mr. Taylor?

11 A. Yes, sir.

12 Q. Would you read the bottom paragraph here, the  
13 bottom two paragraphs?

14 A. "The partnership has never prepared" -- can  
15 everyone hear me okay?

16 THE COURT: We'll let you know if they  
17 can't.

18 Go ahead.

19 THE WITNESS: "The partnership has never  
20 prepared or used a prospectus or other offering  
21 documents and has not used any agents, other than the  
22 two partners. The partners did not prepare or use a  
23 subscription, agreement, questionnaire or investment  
24 contract, other than the notes themselves. As stated in  
25 the narrative, there has been no standard sales pitch

1 and most of the investments were unsolicited. The  
2 partnership ceased accepting funds upon receipt of your  
3 letter of January 22nd and has declined a number of  
4 requests since that time. We have not been able to  
5 identify an exemption available to the partnership under  
6 section 13.1-514 of the Code of Virginia."

7 Q. What is Mr. Derryberry, on behalf of Mr. Johnson,  
8 referring to when he's talking about not being able to  
9 identify an exemption available to the partnership?  
10 What is that?

11 A. When the initial request for information went out  
12 to Mr. Johnson in regards to the advertisement that was  
13 run for the securities, it is our position, to make a  
14 determination whether or not the specific instrument  
15 being used at that time is, in fact, a security, under  
16 the Virginia state code, under the Virginia Securities  
17 Act, there a number of exemptions which are available to  
18 specific issuers during the course of a securities  
19 offering. What this tells the State Corporation  
20 Commission, through Mr. Johnson under counsel, is that  
21 there have been no exemptions that they've been able to  
22 identify in regards to that securities offering.

23 Q. Mr. Taylor, is the federal -- does the state also  
24 have a definition of a security?

25 A. It does, yes, sir.



1 Q. Are there any important differences, for our  
2 purposes here in this case, between the federal  
3 definition of a security and the state definition of a  
4 security?

5 A. No, sir. They're essentially the same.  
6 Materially, they're the same.

7 Q. Now, after the initial group -- let me direct  
8 your attention, Mr. Taylor, to some notes that are  
9 attached to this letter.

10 Were these all received by the State Corporation  
11 Commission, the promissory notes?

12 A. Yes, sir.

13 Q. After that initial group of documents to the SCC,  
14 did Mr. Johnson, through his attorney, periodically  
15 supplement the records that the SCC was requesting with  
16 additional submissions and additional records?

17 A. Yes, sir.

18 Q. I'm going to ask you to turn to one such  
19 submission, which would be Exhibit 26-4.

20 Now, was this part of the ongoing dialogue  
21 between the State Corporation Commission and Mr. Johnson  
22 and his attorney?

23 A. Yes, sir.

24 Q. Was this particular document sent to the State  
25 Corporation Commission?

1 A. It was, yes.

2 Q. Could you read, starting here with "enclosed" and  
3 read down to "note"-- again, this is a letter from who?

4 A. This would have been from Mr. Eugene Derryberry,  
5 representing Ted Johnson and Frank Farrier, to the State  
6 Corporation Commission.

7 Q. What date was this letter dated?

8 A. The letter was actually dated April 10, 2001.

9 Q. Go ahead.

10 A. "Enclosed are copies of bank statements for the  
11 year 2000. The deposits represent investment proceeds  
12 while the checks represent a variety of expenses. I have  
13 asked Mr. Johnson to obtain copies of the checks for the  
14 last three months of 2000 as a representative sample and  
15 I will forward these to you immediately upon receipt."

16 Q. I'm sorry. I don't think you read what I -- did  
17 you start at the top where it says "enclosed"?

18 A. I did not.

19 Q. What I'm asking you to read, Mr. Taylor, is the  
20 top, right under the salutation line, starting with  
21 "enclosed" and ending with "note." That's the part I  
22 meant to ask you to read.

23 A. "Enclosed, to give you an additional feel for the  
24 operations of Mountain Investments, Ltd., as a financial  
25 statement as of December 31, 2000, for it and its

1     affiliate company, Dogwood Farms, Inc., the letter  
2     entity was formed to hold title for real estate  
3     purchased by the venture and it's assets are considered  
4     subject to the claims of the holders of the promissory  
5     note."

6           Q.    Thank you.  Now, when Mr. Derryberry mentions  
7     Mountain Investments and it's affiliate company, is that  
8     a term the SCC uses or is familiar with?

9           A.    Yes, sir.

10          Q.    What is an affiliate company?

11          A.    An affiliate company being a related party in  
12     terms of a corporate entity.

13          Q.    So it was the SCC's understanding at the time  
14     that Mountain Investments and Dogwood Farms were  
15     affiliates or related entities?

16          A.    At this point in the investigation, we would have  
17     known that Mountain Investments was not incorporated  
18     within the Commonwealth of Virginia, that it was  
19     operating as a partnership and Dogwood Farms, Inc., of  
20     course, we would have pulled Mr. Johnson and Mr. Farrier  
21     as corporate officers of that corporation.

22          Q.    You would have known Mountain Investments and  
23     Dogwood had some ownership in common.

24          A.    Yes, absolutely.

25          Q.    If you would go to the second page of that

1 letter, I'm going to ask you to read, starting with "as  
2 you" and ending with "accepted."

3 A. "As you were advised upon our first contact,  
4 Mountain Investments and all of it's affiliates ceased  
5 accepting new money upon receipt of the initial  
6 notification from your office and no further funds are  
7 being accepted."

8 Q. So when Mr. Derryberry on behalf Mr. Johnson  
9 makes the representation --

10 MR. ANDERSON: I will object to the form of  
11 that. He's asking him to comment on Mr. Derryberry's  
12 statement and I think it speaks for itself.

13 THE COURT: I sustain the objection.

14 BY MR. BYBEE:

15 Q. Mr. Taylor, if you will turn to page three of  
16 that exhibit, do you see a financial statement?

17 A. Yes, sir.

18 Q. Was that part of the submission by Mr. Derryberry  
19 at that time?

20 A. Yes, sir.

21 Q. Let me just -- this purports to be a financial  
22 statement for both Mountain Investments and Dogwood  
23 Farms?

24 A. Yes, sir.

25 Q. And the total assets, combined assets of both the

1 partnership and the corporation, do you see that at four  
2 million, something?

3 A. I do, yes, sir.

4 Q. And then the accounts payable, some six million,  
5 something?

6 A. Yes.

7 Q. And down here where the combined net worth of  
8 both Dogwood Farms and Mountain Investments is a  
9 negative \$2 million?

10 A. Yes.

11 Q. \$2.6 million?

12 A. Uh-huh.

13 Q. That was submitted on or about April 10, 2001?

14 A. Yes, sir.

15 Q. Did the SCC make it's own summary of investors  
16 and then request additional documents, Mr. Taylor?

17 A. They did, yes, sir.

18 Q. Could I direct you to 26-5, please, second page?

19 Could you tell us what this document is, Mr.

20 Taylor?

21 A. This is an additional request from the Division  
22 of Securities and Retail Franchising, addressed to Mr.  
23 Derryberry as counsel for Mr. Johnson and Mr. Farrier,  
24 requesting additional information and documents.

25 Q. Is one of those documents some personal financial

1 statements from the partners of Mountain Investments?

2 A. Yes, sir.

3 Q. Did Mr. Johnson, through Mr. Derryberry, respond  
4 and comply with that request?

5 A. Yes, sir.

6 Q. I direct your attention to 26-6, please. Is this  
7 that reply, Mr. Taylor?

8 A. Yes.

9 Q. Do you see item three where they include signed  
10 financial statements from Mr. Johnson and Mr. Farrier?

11 A. I do, yes.

12 Q. That was received what date?

13 A. That would have been received July 13, 2001.

14 Q. Would you turn to the second page, please? Is  
15 this the financial statement that was supplied by Mr.  
16 Johnson and Mr. Derryberry to accompany that letter?

17 A. Yes, sir.

18 Q. Does this purport to be a personal financial  
19 statement of Mr. Johnson?

20 A. It does.

21 Q. Mr. Johnson lists his total assets of just over  
22 \$2 million?

23 A. Yes, correct.

24 Q. That his liabilities are just a little over  
25 \$2 million, as well?

1 A. Yes, uh-huh.

2 Q. And his net worth, he represents to the State  
3 Corporation Commission, as a little over \$25,000?

4 A. That's correct.

5 Q. Does Mr. Johnson certify this information at the  
6 bottom?

7 A. He does, yes.

8 Q. I notice there is -- that the date's at 12/31/01,  
9 but the certification is December 31, '00. Do you see  
10 that?

11 A. I do, yes.

12 Q. At some point in time -- strike that. At some  
13 point in time, did the SCC enter into a settlement  
14 agreement with Mr. Johnson and the partnership, Mountain  
15 Investments?

16 A. They did, yes, sir.

17 Q. I direct your attention to Exhibit 26-7. Could  
18 you go to page two, please?

19 Would you tell us what 26-7 is, Mr. Taylor?

20 A. This would be a settlement order between the  
21 Commonwealth of Virginia State Corporation Commission  
22 and Mr. Frank G. Farrior and Ted G. Johnson, general  
23 partners, doing business as Mountain Investments, Ltd.

24 Q. Does the settlement order require Mr. Johnson to  
25 repay all the investors?

1 A. It did, yes, sir.

2 Q. Could I direct your attention to the second page?  
3 Looking at the very bottom, D, did the settlement order  
4 also enjoin or bar the defendants or bar Mr. Johnson and  
5 Mr. Farrier from any future violations of the act?

6 A. It did, yes, sir.

7 Q. Would that include issuing any new promissory  
8 notes?

9 A. Absolutely.

10 Q. If you will look at what is page six of the  
11 settlement order. I'm not sure what it is. It's  
12 probably the next to the last page of the exhibit.

13 Did Mr. Johnson and Mr. Farrier both sign and  
14 date and agree to the settlement?

15 A. They did, yes, sir.

16 Q. Now, I'm going to ask you -- was Mr. Johnson  
17 required to provide as part of the settlement agreement  
18 periodic status reports on his efforts to repay the  
19 investors?

20 A. Yes, sir, that's correct.

21 Q. Let me direct your attention to 29-9, please. Do  
22 you see --

23 THE COURT: I have a different 26-9. Maybe  
24 there are two pages to it.

25 MR. BYBEE: There are four or five pages to



1 it.

2 THE COURT: Go ahead.

3 BY MR. BYBEE:

4 Q. Do you see the mailing label as the first part of  
5 this exhibit, Mr. Taylor?

6 A. Yes, sir.

7 Q. How did the State Corporation Commission receive  
8 or obtain the mailing label?

9 A. This would have been received from a mailing from  
10 Mountain Investments to the Division of Securities with  
11 the State Corporation Commission.

12 Q. This happened to be copied and put in the file?

13 A. That's correct, yes.

14 Q. It shows that it was sent on or about 11/30,  
15 2002, is that right, November 30?

16 A. That's correct, yes.

17 Q. It was sent from Mountain Investments to the  
18 State Corporation Commission?

19 A. Yes, sir.

20 Q. Would you go to page two of that exhibit, please?  
21 Would you just read that very short letter from Mr.  
22 Johnson, please?

23 A. "Please find the November 2, 2002 report from  
24 Mountain Investments, Ltd. Each reduction shown is by  
25 agreement of the respective investor, with the remaining

1 investors to be satisfied within seven days of this  
2 report. Within ten days of this report, I will file an  
3 amended report that I have full expectations will have  
4 all investors' notes reduced to zero balance."

5 Q. Was there a spread sheet accompanying this  
6 letter?

7 A. There was, yes, sir.

8 Q. Would you go to the next page? Is this part of  
9 that spread sheet?

10 A. It is, yes.

11 Q. Would you just tell us -- let me direct your  
12 attention to just the first name and we'll go over that,  
13 Mr. Allison. Is this the balance that Mountain  
14 Investments owed as of 11/5/02? Is that the  
15 representation here?

16 A. That's correct, yes.

17 Q. His principle was reduced by a certain amount and  
18 then the balance that was owed to Mr. Allison on  
19 12/1/02, would be zero?

20 A. That is what Mr. Johnson is reporting to the  
21 state, yes.

22 Q. Do you see in the third column these balances  
23 where most of them, with a few exceptions, at least four  
24 on this page, are all zero?

25 A. Yes, that's correct.

1 Q. Is that the representation to the state that  
2 these investors have at least a zero balance, at least  
3 as far as what's being owed to them by Mountain  
4 Investments?

5 A. That's correct, yes.

6 Q. Now, in the following month, in December, did Mr.  
7 Johnson again make a submission to the state or send in  
8 a status report of some kind?

9 A. He did, yes.

10 Q. Would you please turn to Government's  
11 Exhibit 26-10? Is this a similar letter to the previous  
12 one where he is sending in a summary of his efforts to  
13 repay investors?

14 A. It is similar. However, in this letter, he  
15 indicates there are zero balances for all investors at  
16 this point.

17 Q. Is this where you're reading right there?

18 A. That's correct, yes, sir.

19 Q. If you would go to page two of that. Is that in  
20 reference to this third column where he represents to  
21 the state that all the Mountain investors had been  
22 repaid?

23 A. At this point based on this letter and spread  
24 sheet, he's representing that all investors have been  
25 paid, that is correct.

1 Q. Could I retrieve Exhibit 54-1 from the exhibits  
2 previously admitted, please?

3 Mr. Taylor, if you would look at Exhibit 54-1,  
4 some excerpts from Mr. Johnson's personal journals. I'm  
5 going to ask you to locate an entry dated December 1,  
6 2002.

7 A. Yes, sir.

8 Q. Could you just highlight that?

9 Would you read that, please, the December 1, '02  
10 entry?

11 A. "Sent report to state. Should hear from  
12 tomorrow."

13 Q. Now, did Mr. Johnson continue sending reports on  
14 into 2003?

15 A. He did, yes, sir.

16 Q. Let me direct your attention to 26-11. Could you  
17 explain what we're seeing on the first page of 26-11,  
18 Mr. Taylor?

19 A. Again, this would have been the mailing which  
20 would have come to the State Corporation Commission  
21 Division of Securities from a Mr. Ted Johnson, Jr.

22 Q. What date was this received or sent?

23 A. This is dated January 22, 2003.

24 Q. From Mr. Johnson to the State Corporation  
25 Commission?

1 A. That's correct.

2 Q. Would you go to page two, please? Is this the  
3 letter that was received by the State Corporation  
4 Commission on or about that date?

5 A. Yes, sir.

6 Q. Again, accompanying this letter, was there  
7 another spread sheet similar to the previous spread  
8 sheets we've seen?

9 A. Yes, there was.

10 Q. Could you go to page three? Is this a further  
11 spread sheet where investors are on the left side and  
12 there's a series of balances for these investors and the  
13 last column has a balance as of a certain date? Do you  
14 see that?

15 A. Yes, sir.

16 Q. Mr. Taylor, according to the records that have  
17 been submitted so far to the state, up until this time  
18 period, was there ever an indication in any of the  
19 documents sent by Mr. Johnson that they were issuing new  
20 promissory notes on the Dogwood Farms property?

21 A. No, never.

22 Q. Now, did Mr. Johnson at some point in time  
23 attempt to summarize his efforts that he was making to  
24 repay investors?

25 A. Yes, sir.

1 Q. Let me direct your attention to Exhibit 26-13.  
2 Again, the first page of this exhibit is a postal  
3 mailer. Could you just walk us through that, please?

4 A. Again, this would have been a mailer provided for  
5 which it's addressed to the State Corporation Commission  
6 from Mr. Ted Johnson, Jr.

7 Q. This would have been sent on or about --

8 A. The date of this appears to be April 9, 2003.

9 Q. Would you go to the second page of this exhibit?  
10 Is this part of the summary that Mr. Johnson was  
11 submitting to the state?

12 A. It is, yes, sir.

13 Q. Would you read the third paragraph that starts  
14 with "also previously"?

15 A. "Also previously forwarded to the state was an  
16 attachment indicating the source of the funds expended.  
17 As indicated by the attachment, the funds were derived  
18 from the sale of electrical products, trading accounts,  
19 advances on inheritances, deeds of trust on personal  
20 residences and real estates of Frank Farrier and Ted  
21 Johnson and loans from family friends. All of this was  
22 done in an effort to satisfy notes created by Mountain  
23 Investments, Ltd., and to comply with the agreed order."

24 Q. Thank you.

25 Let me direct your attention to some further

1 submissions. If you would turn to 26-14, please. Is  
2 this also a letter sent by Mr. Johnson to the  
3 Corporation Commission?

4 A. Actually, I think this letter was faxed to the  
5 Corporation Commission, yes, sir.

6 Q. Is that because of the fax information at the top  
7 of this?

8 A. Yes, sir.

9 Q. This would have been received on or about what  
10 date?

11 A. May 19, 2003.

12 Q. Could you just read the bottom two paragraphs,  
13 starting with "Mountain" and ending with "commission,"  
14 please?

15 A. "Mountain Investments, Ltd., is provide your  
16 office on or before June 2, 2003, a final report that  
17 indicates all of the remaining investors of Mountain  
18 Investments, Ltd., have been satisfied in full.  
19 Included in this report will be documentation that will  
20 verify the payoffs to the investors. With this final  
21 report, all of the investors of Mountain Investments,  
22 Ltd., will be satisfied in full and reported to the  
23 State Corporation Commission."

24 Q. Thank you. Now, did Mr. Johnson also send a  
25 letter later that same month, on May 30, 2003?

1 A. He did, yes, sir.

2 Q. Let me direct your attention to 26-15. Now,  
3 could you please read for us the first paragraph?

4 A. "When I last spoke to you, I fully anticipated  
5 having the remaining investors satisfied in full by this  
6 date. Over the last 70 plus days, I have been working  
7 on completing a trading program that I would utilize in  
8 finalizing our obligations to the investors as shown on  
9 the attached report."

10 Q. If you go to page two, please? Would you read --  
11 actually, just read these three paragraphs, please.

12 A. "Two different trading methodologies were to have  
13 been received several weeks ago, along with one that I  
14 was expecting when I talked to you a couple of weeks  
15 ago. Neither was received timely and I am just now  
16 receiving both of them as of today. One of the trading  
17 methodologies has been traded by the developer in real  
18 time for over 14 months and yields over \$400 per day per  
19 unit. I have two different accounts that I am a  
20 contractor and receive 50 percent of the profits. These  
21 accounts can trade 90 units per day so within the next  
22 30 days, any investor that is shown on the attached  
23 report today will be satisfied in full. I would like to  
24 point out that since Mountain Investments, Ltd., was  
25 first notified by your department of our necessity of



1 complying with state regulations, we have reduced our  
2 obligation to our investors by 86 percent, in the amount  
3 of 4,711,414.60.

4 Q. If you could pick up Exhibit 54-1 again and find  
5 the line entry for June 1, 2003.

6 A. Yes, sir.

7 Q. Would you read that, please?

8 A. "Sent the state a report yesterday. They will  
9 get it Monday."

10 Q. Now, do you know when the SCC finally found out  
11 that Mr. Johnson was issuing more promissory notes  
12 through Dogwood Farms?

13 A. At that point, I was fully engaged in the  
14 investigation and it did not come to my awareness until  
15 the early part of 2004.

16 Q. Were you then the lead investigator on the case?

17 A. That is correct, yes, sir.

18 Q. Based on that, was the SCC preparing to take any  
19 further action?

20 A. Based on my investigation and having found that,  
21 in fact, the notes had not been repaid as per the terms  
22 of the original settlement order, yes. The State  
23 Corporation Commission and the Division of Securities  
24 moved for what we call a rule to show cause hearing for  
25 contempt violation of the original settlement order.

1 Q. Did anything prevent that?

2 A. The actual hearing itself was continued twice up  
3 until there was a bankruptcy filing in September of 2004  
4 which preempted our pursuing that rule to show cause,  
5 yes, sir.

6 Q. Just a point of clarification, Mr. Taylor. The  
7 settlement order that enjoined any future violations of  
8 the Securities Act, did that include all promissory  
9 notes, whether they were written on Mountain Investments  
10 or Dogwood Farms?

11 MS. ANDERSON: I'll object to that. The  
12 order is entered as an exhibit and speaks for itself.

13 THE COURT: I overrule your objection.

14 THE WITNESS: That order would -- yes, it  
15 would have been all inclusive, regardless of whether it  
16 would have been Mountain Investments, Dogwood Farms or  
17 any other entity that Mr. Johnson and Mr. Farrier would  
18 have entered into, yes.

19 MR. BYBEE: Thank you.

20 No further questions.

21 May I move for the admission of Exhibits  
22 26-1 through 26-16, with the exception of two? 26-8, I  
23 believe is blank. There is no exhibit there. And  
24 26-12, I intentionally omitted and am not asking to be  
25 admitted.

1 THE COURT: They'll be received.

2 (Government Exhibits 26-1 through 26-7;  
3 Exhibits 26-9 through 26-11; and Exhibits 26-13 through  
4 26-16 were admitted into evidence).

5 CROSS-EXAMINATION

6 BY MR. ANDERSON:

7 Q. Good morning, Mr. Taylor.

8 A. Good morning.

9 Q. When did you first become involved with the  
10 investigation on behalf of the State Corporation  
11 Commission?

12 A. I actually started with the State Corporation  
13 Commission in November of 2003, and it wasn't too much  
14 further after that that the case was actually reassigned  
15 to me.

16 Q. So from the inception of January of '01 to the  
17 latter part of '03, another of your colleagues was  
18 running this investigation.

19 A. That's correct, yes, sir.

20 Q. The correct way to pronounce his name is how,  
21 sir?

22 A. My understanding -- I don't know the individual.  
23 My understanding, it's Chartier.

24 Q. Did you ever have an opportunity after your  
25 involvement to discuss the investigation with Mr.

1 Chartier?

2 A. At one time, yes, I did.

3 Q. Did he give you any insight on the investigation  
4 or bring you up-to-date on what his role had been with  
5 respect to Mountain Investments, Mr. Farrier and Mr.  
6 Johnson?

7 A. The only thing that would have been discussed  
8 with Mr. Chartier would have been what was in the record  
9 at that time based on the investigative file.

10 Q. If I can ask the government to put up, please,  
11 Government Exhibit 26-7 and then go to page six, the  
12 signature page of that exhibit, please.

13 Mr. Taylor, does this look like to you it is the  
14 signature page on the settlement order between State  
15 Corporation Commission, Frank Farrier, Ted Johnson,  
16 general partners, doing business as Mountain  
17 Investments, Ltd.?

18 A. It does, yes, sir.

19 Q. The signatures you've identified earlier are  
20 those of Mr. Farrier and Mr. Johnson?

21 A. That's correct.

22 Q. There's no signature of Dogwood Farms on that  
23 order, is there, sir?

24 A. No, sir.

25 Q. If I may then, please, Ms. Vogt, go back to page

1 two of exhibit -- Government Exhibit 26-7, please.

2 That's the front page of the settlement order  
3 between the State Corporation Commission and Mr. Farrier  
4 and Mr. Johnson, general partners, doing business as  
5 Mountain Investments?

6 A. Yes, sir.

7 Q. Please turn to the next page. Under paragraph D,  
8 can I get you to highlight that, please, Ms. Vogt?

9 That paragraph D says, "Pursuant to section  
10 13.1-519 of the act, the defendants will be permanently  
11 enjoined from future violations of this act;" is that  
12 correct?

13 A. Yes, sir.

14 Q. Dogwood Farms is not listed as a defendant in  
15 that order, is it, sir?

16 A. It's not listed specifically there, no.

17 Q. So when you testify that the Dogwood Farms notes  
18 you would consider to have been enjoined pursuant to the  
19 terms of this order, that's really your opinion as to  
20 what this order says and not actually what the order  
21 reflects; isn't that true?

22 A. Under the Virginia Securities Acts, all the  
23 provisions within that act would speak to any future  
24 violations, regardless of whether it was a registration  
25 violation or whether, in particular case of Dogwood

1 Farms, there were issues of misrepresentation or  
2 omission of material fact. It is conclusive.

3 Q. You will agree with me, however, would you not,  
4 sir, that Dogwood Farms is not listed as a defendant in  
5 that order?

6 A. It is not listed within the order. However, it  
7 is identified by counsel prior to, during dialogue and  
8 correspondence with the division.

9 Q. And you would agree with me, would you not, sir,  
10 that Dogwood Farms nor any representative in an official  
11 office capacity of Dogwood Farms is an endorser of that  
12 order.

13 A. That would be correct.

14 Q. Thank you. Mr. Taylor, I want to speak with you  
15 now about Government Exhibit 26-10. That exhibit has  
16 several pages contained within it. I will try to get  
17 the correct page so we can pull it up on the screen. I  
18 may ask you to look at the second and third pages of  
19 Government Exhibit 26-10.

20 These are what you identified earlier as  
21 submissions by Mountain Investments through Mr. Johnson  
22 as documents sent to Mr. Chartier during the course of  
23 this investigation.

24 A. That is correct.

25 Q. Dated December 10, 2002.

1 A. Payment schedule, that is of December 10th, yes,  
2 sir.

3 Q. It shows certain balances of the Mountain  
4 Investments investors to be zero.

5 A. Yes.

6 Q. If you may, please put up page six of Government  
7 Exhibit 26-10, please.

8 I apologize. For the record, it should be  
9 Government 26-11, the third page of that, please.

10 Mr. Taylor, this is a summary of the Mountain  
11 Investments investors, submitted to the SCC by Mr.  
12 Johnson?

13 A. Yes, sir.

14 Q. And again, the balance as of January 1, 2003, do  
15 you see this area here?

16 A. Yes, I do.

17 Q. Those are left blank, are they not?

18 A. That column in particular is blank, yes.

19 Q. Did you inquire or were you involved in the  
20 investigation at that time to determine what those  
21 blanks referenced?

22 A. I was not.

23 Q. Were you aware that during the course of the  
24 investigations Mr. Chartier was investigating that there  
25 were times Mr. Johnson, on behalf of Mountain

1 Investments, made amendments to the schedules that had  
2 been sent to the State Corporation Commission?

3 A. I understand there were numerous filings and  
4 amendments that were made. I can tell you from my  
5 assessment of what was on record, it was all over the  
6 place.

7 Q. Though you weren't involved in that  
8 investigation, nor were you part of the agreement  
9 reached by Mr. Chartier and Mountain Investments, you  
10 have gone back and formulated your opinions after the  
11 fact, have you not?

12 A. I don't know what agreement there was between Mr.  
13 Chartier --

14 Q. You certainly know there was a settlement order.

15 A. Right, yes, sir.

16 Q. Prior to that, you don't know what was said to  
17 Mr. Chartier by Mr. Johnson or Mountain Investments with  
18 respect to any of these amendments, do you, sir?

19 A. No, sir, I don't.

20 Q. You can't testify to this jury what they were,  
21 can you, sir?

22 A. I can only testify as to what was in the record,  
23 yes, sir.

24 Q. Is it also true, Mr. Taylor, that the SCC, in  
25 it's many divisions, particularly the State Corporation



1 Commission Securities Retail Division, as you've  
2 testified earlier, is civil enforcement and not  
3 criminal.

4 A. That is correct, yes, sir.

5 Q. Is it also not true, Mr. Taylor, you or your  
6 agency in that level of investigation can make referrals  
7 to, say, the Attorney General's office, for criminal  
8 prosecution?

9 A. That is correct, yes.

10 Q. Thank you, sir. I have no further questions.

11 MR. BYBEE: No redirect.

12 THE COURT: You may step down, sir.

13 Call your next witness.

14 MR. BYBEE: Dave Frye.

15 DAVID FRYE, CALLED AS A WITNESS BY THE GOVERNMENT, SWORN

16 DIRECT EXAMINATION

17 BY MR. BYBEE:

18 Q. Can you tell us your name, sir?

19 A. David T. Frye.

20 Q. Where do you reside?

21 A. Roanoke, Virginia.

22 Q. What is your occupation?

23 A. I'm a special agent with the Federal Bureau of  
24 Investigation, here in Roanoke, Virginia.

25 Q. Were you present during the search of Mr.

1 Johnson's residence, Mr. Frye?

2 A. Yes, I was.

3 Q. In a general sense, can you tell us what kinds of  
4 records you were searching for?

5 A. Any type of financial or business record related  
6 to Mr. Johnson and the company, Mountain Investments  
7 and/or Dogwood Farms.

8 Q. Did that include documents which might establish  
9 or document the defendant's own income or financial  
10 condition?

11 A. Yes, it did.

12 Q. I'd like to talk to you, Mr. Frye, about some  
13 specific documents found during the search. I'd first  
14 like you to turn to Exhibit 6-3. Do you recognize that  
15 exhibit?

16 A. Yes, I do.

17 Q. Was that found at -- taken from Mr. Johnson's  
18 home during the search?

19 A. It was.

20 Q. What is this?

21 A. This is an earnings statement for Mr. Ted Johnson  
22 from the Social Security Administration.

23 Q. It has Mr. Johnson's name on it and his address?

24 A. Yes, it does.

25 Q. If you could -- if I could direct your attention

1 to the third or -- I think it's the third page, where at  
2 the top it says, "help us keep your earnings record  
3 accurate." Do you see that?

4 A. Yes.

5 Q. Would you just read, starting with "since you  
6 began working" and stop at "earnings"?

7 A. "Since you began working, we recorded your  
8 reported earnings under your name and social security  
9 number. We have updated your record each time your  
10 employer or you, as self-employed, reported your  
11 earnings."

12 Q. Could you now go to the right-hand column, and do  
13 you see that, Mr. Frye?

14 A. Yes.

15 Q. Could you tell us or just read for us the amount  
16 of tax social security earnings and Medicare earnings  
17 Mr. Johnson reported from 1992 to 2002?

18 A. The record reflects no earnings spanning 1992  
19 through the year 2003 and reflects 2004 had not yet been  
20 reported.

21 Q. Have you also, in preparation for your testimony  
22 here today, examined Exhibit 50, which are the tax  
23 returns of Mr. Johnson which have previously been  
24 admitted into evidence in this case?

25 A. Yes, I've reviewed those records.

1 Q. Do those -- are those tax returns consistent with  
2 this record here reporting no earnings and no taxes  
3 paid?

4 A. Yes, they are consistent.

5 Q. Now, could I direct your attention to 6-9? Could  
6 you just -- it's in the back of your exhibit book.  
7 Could you just hold that up and tell us what that is?

8 A. This is a booklet that was found during the  
9 search of Mr. Johnson's home and it is a booklet  
10 entitled Virginia Securities Act, 1999 edition.

11 Q. Thank you. Now, let me direct your attention to  
12 Exhibit 54-1. Are you familiar with that exhibit, Mr.  
13 Frye?

14 A. Yes, I am.

15 Q. Now, using the excerpts for the document  
16 contained within 54-1, did you then do some other  
17 calculation or addition to that exhibit?

18 A. Yes.

19 Q. What did you do?

20 A. We took this particular -- this was actually  
21 created in an Excel spread sheet. We took this document  
22 and merged it with another spread sheet that was created  
23 that reflected the deposits into the accounts of the  
24 various investors.

25 Q. Was that information taken from Exhibit 60, Ms.

1 Warner's master spread sheet?

2 A. I believe that's the correct exhibit, yes.

3 Q. So that the new exhibit would just contain the  
4 excerpts, with the deposits.

5 A. That's correct. We combined the two exhibits  
6 essentially and sorted that by the date so that you  
7 could see the deposits reflected, with the journal  
8 entries, in chronological order.

9 Q. Mr. Frye, let me -- I've handed you or asked the  
10 bailiff to hand you Exhibit 54-2. Is this the document  
11 that you were just talking about, the merged exhibit  
12 between the excerpts and Ms. Warner's master spread  
13 sheet?

14 A. That's correct.

15 Q. It just continues the excerpts, along with  
16 deposits from investors.

17 A. Yes, sir, noting the deposits are reflected in  
18 red.

19 Q. And they are reflected at the time the deposits  
20 were made, merged into the spread sheets.

21 A. That's correct.

22 Q. Mr. Frye, were you also, as part of your efforts  
23 or investigation, assisted in the collection of the  
24 records from Federal Express?

25 A. Yes.

1 Q. Is Federal Express a commercial interstate  
2 carrier?

3 A. Yes, it is.

4 Q. Now, let me direct your attention to Exhibit 6-4.  
5 In your efforts -- is that a sticky that's on your  
6 exhibit, Mr. Frye?

7 A. Yes, it is.

8 Q. Was Dogwood Farms of interest to you during the  
9 search, Mr. Frye?

10 A. Yes, it was.

11 Q. Would any documents relating to the value of  
12 Dogwood Farms also have been of interest to you?

13 A. Yes, sir.

14 Q. Was this document also taken during the search?

15 A. Yes, it was.

16 Q. Can you tell us who this letter is to and who  
17 it's from?

18 A. This letter dated January 24, 2001, is directed  
19 to Mr. Ted Johnson from Carnell Investments.

20 Q. Would you read the letter, please?

21 A. "Dear Mr. Johnson, after further review, we are  
22 unable to provide you the financing you requested. We  
23 wish you the best with your development. Following this  
24 page are just a few reasons we are unable to provide the  
25 financing you requested. Enclosed is your retainer

1 refund minus our expenses. If you have other investments  
2 you would like to discuss or any questions, please call  
3 me at 805-595-9302. Sincerely, Greg Carnell.

4 Q. Would you turn to page two?

5 A. Yes.

6 Q. This Dogwood Farms, 281 acres, is that what you  
7 understand to be the acreage in reference to the Dogwood  
8 Farms property?

9 A. This is the property that would include the  
10 Dogwood Farms property and some property that is also  
11 owned by Mr. And Mrs. Johnson.

12 Q. At least for our purposes in this case, has it  
13 all been lumped together and referred to as the Dogwood  
14 Farms property?

15 A. Typically, yes.

16 Q. Would you read page two, please?

17 A. "Dogwood Farms, 281 acres, Virginia, do not  
18 recommend. Property marketable value not sufficient.  
19 Higher than allowed LTD. Two quick sales estimates put  
20 loan request over acceptable LTB. BK possibility too  
21 high. BK possibility very likely with Ted Johnson's  
22 house as additional collateral. No verifiable income or  
23 substantial assets beyond subject property. Applicant  
24 has very little, if any, cost basis into property.  
25 Applicant is income poor, cash poor, with no assets.

1 Environmental report had too many tentative issues.  
2 Market conditions have changed. Subject property is  
3 speculative property which doesn't fare well in current  
4 environment."

5 Q. The date of that letter, again, Mr. Frye, was?

6 A. January 24, 2001.

7 Q. Now, was there also an appraisal of the property  
8 found during the search?

9 A. Yes.

10 Q. Let me direct your attention to 6-5, please. Is  
11 this the same appraisal we've seen previously? I believe  
12 Mr. Church made reference to it?

13 A. Yes, it is.

14 Q. That also was found during the search?

15 A. Yes, it was.

16 Q. The appraised value, at least as of  
17 February 2001, was what?

18 A. 2.1 million.

19 Q. Can you give us a better idea of what the two  
20 tracts of land we're talking about is? Do they have  
21 names? Can we refer to them and who owns them?

22 A. It is my understanding from the review of the  
23 various documents we found during the search that the  
24 two pieces of property, one is typically referred to as  
25 the Mason property, which was actually owned by Dogwood



1 Farms, Incorporated. The other parcel of land is  
2 typically referred to as the Shumate property and it is  
3 owned by Mr. And Mrs. Johnson.

4 Q. When you put those two pieces of property  
5 together, they come up with the 280 or 81 acres?

6 A. That's my understanding.

7 Q. Was the value of this land also stated in the  
8 bankruptcy petition?

9 A. It was.

10 Q. Can I retrieve Exhibit 6-7 and 8, the bankruptcy  
11 petitions? Would you please turn to 6-7 first, please,  
12 Mr. Frye? This is the bankruptcy petition for what  
13 entity?

14 A. This would be the Dogwood Farms, Incorporated.

15 Q. Would you turn to page five, Schedule A, real  
16 property?

17 A. Yes.

18 Q. Does that indicate -- is the Mason farm or the  
19 Mason property listed there?

20 A. Yes, it is.

21 Q. And the value given by the debtor is what?

22 A. \$1.3 million.

23 Q. Could you now turn to Exhibit 6-8, please? What  
24 bankruptcy petition is this?

25 A. This would be Ted Johnson's, bankruptcy petition.

1 Q. Page six, please. Schedule A real property, are  
2 you there?

3 A. Yes.

4 Q. Does this list the Shumate tract?

5 A. Yes, it does.

6 Q. And the value given by the debtor there?

7 A. 800,000.

8 Q. The two figures together, 1.3 and 8 come out to?

9 A. \$2.1 million.

10 Q. Thank you. Now, I'd like, Mr. Frye, as part of  
11 your investigation, have you looked into and made  
12 yourself knowledgeable about the deeds of trust that  
13 were filed on the Dogwood Farms property?

14 A. Yes, I have.

15 Q. Could I direct your attention to Exhibit 56, 1  
16 through 6? Do you have that? Do you have that in front  
17 of you, Mr. Frye?

18 A. Yes, I do.

19 Q. Would you walk us through the various deeds of  
20 trust that were filed on the land, beginning with 56-1  
21 to 56-5, please?

22 A. Okay. The first Exhibit, 56-1, is deed of trust  
23 that was filed on behalf of Gourley and Gourley.

24 Q. Who is Gourley and Gourley?

25 A. It was an entity that had lent money to Mr.

1 Johnson.

2 Q. Do you have a date this deed of trust was filed?

3 A. It's 1999, in the summer of 1999.

4 Q. What was the amount of that deed of trust?

5 A. \$875,000.

6 Q. 875 or 825?

7 A. I'm sorry, it was 825.

8 Q. What position would they have been as far as  
9 being a lienholder on the land?

10 A. That would have been in the first lien position.

11 Q. So that would have been the first deed of trust  
12 filed.

13 A. Yes.

14 Q. Is there -- on the deed of trust typically, is  
15 there a description of the land which describes what  
16 actually the deed of trust is security for?

17 A. Yes, there is. That's the final page in this  
18 exhibit.

19 Q. Does it list both the Mason and Shumate tracts of  
20 land?

21 A. Not by name, but it lists two different tracts of  
22 land. One is by Dogwood Farms and the other reference  
23 is Johnson.

24 Q. Do they roughly come up to the roughly 281 --

25 A. Approximately.

1 Q. Could you then go to 56-2, please, and would you  
2 tell us what this deed of trust is?

3 A. This is a deed of trust that was filed in the  
4 second lien position on behalf of Patricia Neville, for  
5 \$400,000.

6 Q. It was filed when?

7 A. In March of 2000.

8 Q. You say this was -- she was in the second  
9 lienholder position?

10 A. That's correct.

11 Q. Again, on that description page for the property,  
12 are the two tracts of land listed?

13 A. It's on the final page of this exhibit. It also  
14 depicts both tracts of land.

15 Q. Would you go to 56-3, please?

16 A. This is a deed of trust that was filed in the  
17 third lien position for \$355,000 that referenced  
18 multiple individuals.

19 Q. And it was filed when?

20 A. May 31, 2001.

21 Q. Does it also reference the two tracts of land?

22 A. Yes, it lists two tracts of land.

23 Q. Would you go to 56-4, please?

24 A. This is a deed of trust for \$100,000, filed  
25 May 31, 2002.

1 Q. This is -- who's the beneficiary of this deed of  
2 trust?

3 A. This would have been Mr. Martin, Ross E. Martin,  
4 and his wife, Gladys Martin.

5 Q. Did you say it was filed in May of '02?

6 A. Yes.

7 Q. Again, is the same Dogwood property put up for  
8 the security?

9 A. There is also two tracts of land referenced in  
10 the legal description.

11 Q. Would you go to 56-5, please?

12 A. This is a \$200,000 deed of trust filed on behalf  
13 Donald H. Church, listing the two tracts of land, once  
14 again, filed in August 9, 2002.

15 Q. Now, were there any other deeds of trust that you  
16 found that were filed at the courthouse on that land?

17 A. No, there were not.

18 Q. Now, roughly, summing up the total of those deeds  
19 of trust, roughly about \$1.8 million?

20 A. That is correct.

21 Q. Now, during the search, did you find any other  
22 deed of trust purporting to be secured by the Dogwood  
23 Farms property?

24 A. Yes, we did.

25 Q. Would you turn to 56-6, please? What is this?

1       A. This is a deed of trust which our investigation  
2       has determined was never filed. A copy of this deed of  
3       trust was found during the search warrant of Mr.  
4       Johnson's home.

5       Q. Were there a number of beneficiaries of this deed  
6       of trust, Mr. Frye?

7       A. Yes, there were.

8       Q. Mary, could you display page two or three? I'm  
9       not certain.

10           Do you know how many investors were listed on  
11       this deed of trust, Mr. Frye?

12       A. I don't know a specific number. I believe it's  
13       well over 50.

14       Q. Are there two pages of these names of note  
15       holders?

16       A. Yes, there are.

17       Q. The total value of this deed of trust was what?

18       A. 5,632,600.13 -- I'm sorry -- 5,632 --  
19       5,632.600.91

20       Q. Is it 613?

21       A. 613.91.

22       Q. Are those all the note holders on this deed of  
23       trust, Mr. Frye?

24       A. Yes.

25       Q. Could you go to 56-7, please? Mr. Frye, this is a

1 summary of the information that you've just testified  
2 to. Would you look at it and make sure that's accurate?

3 A. Yeah, I've added this up. The figure at the  
4 bottom is accurate.

5 Q. So that if you combine both the filed deeds of  
6 trust and the unfilled deeds of trust, this land -- or  
7 had the deed of trust -- let me put it that way. Had  
8 the sixth deed of trust been filed on the land, the  
9 liens would have totaled over \$7 million?

10 A. That's correct.

11 MR. BYBEE: Your Honor, at this point, I  
12 would ask to admit Exhibit 6-3, 6-4, 54-2, 6-5 and 56-1  
13 through 56-7.

14 THE COURT: It will all be received.

15 (Government Exhibits 6-3, 6-4, 6-5, 54-2 and  
16 56-1 through 56-7 were admitted into evidence).

17 MR. BYBEE: No further questions.

18 CROSS-EXAMINATION

19 BY MR. ANDERSON:

20 Q. Good morning, Mr. Frye.

21 A. Good morning.

22 Q. Mr. Frye -- I should say Special Agent Frye.  
23 Excuse me. When you executed the search warrant at Mr.  
24 Johnson's residence, did it have an office in it?

25 A. Yes, it did.

1 Q. Did most of the documents that have been referred  
2 to having come from the residence of Mr. Johnson come  
3 from that office?

4 A. A large portion came from that office, but not  
5 all of the records.

6 Q. Did you find any evidence to suggest to you that  
7 in that office that any documents had been intentionally  
8 shredded or destroyed in any way?

9 A. No, sir.

10 Q. Other than the exhibit that was prepared by the  
11 FBI, by Mrs. Warner, regarding the four bank accounts  
12 from National Bank of Blacksburg and others, a lot of  
13 the investor documents came from the search of that  
14 office. Is that fair?

15 A. We obtained many records pertaining to investors,  
16 yes.

17 Q. Special Agent Frye, in conducting your  
18 investigation, do you know which counts Mr. Frank  
19 Farrier pled guilty to?

20 A. I have a record here, if I could refer to it.

21 Q. Please do.

22 A. Mr. Farrier pled guilty to Counts 1, 19, 22, 35,  
23 36 and 42.

24 Q. 1, 19, 22 --

25 A. 35, 36 and Count 42.



1 Q. Thank you, sir. Special Agent Frye, you were  
2 present in the courtroom when Mr. Donald Church  
3 testified?

4 A. Yes, I was.

5 Q. Did you hear his responses to questions and know  
6 from other experiences that at some point, he filed  
7 certain complaints against the FBI, yourself and other  
8 agencies involved in this case?

9 A. Yes, sir.

10 Q. Do you know, sir, what the outcome of those  
11 complaints were?

12 A. With respect to the complaint filed within my  
13 office, it was not pursued as an administrative inquiry.

14 Q. Thank you, sir.

15 MR. ANDERSON: That's all I have. Thank  
16 you.

17 THE COURT: Anything further of this  
18 witness?

19 MR. BYBEE: No, sir.

20 THE COURT: How long do you expect your next  
21 witness to take?

22 MR. BYBEE: 35 to 40 minutes.

23 THE COURT: When are we expecting lunch to  
24 arrive for the jury?

25 COURT SECURITY OFFICER: 12:15.

1 THE COURT: Let's do this. Let me take a  
2 very quick break, not more than five minutes, and then  
3 we'll continue on.

4 (Recess at 11:50 a.m. until 12:00 p.m.)

5 MR. BYBEE: United States calls Joanna  
6 McGraw.

7 JOANNA MCGRAW, CALLED AS A WITNESS BY THE GOVERNMENT,  
8 SWORN

9 DIRECT EXAMINATION

10 BY MR. BYBEE:

11 Q. Can you tell us your name, ma'am?

12 A. Joanna McGraw.

13 Q. Where do you live, Mrs. McGraw?

14 A. Roanoke City.

15 Q. What do you do for a living?

16 A. I'm a real estate auctioneer and real estate  
17 broker.

18 Q. Can you give us just a little thumbnail sketch of  
19 what those jobs entail?

20 A. Yes. I go out and procure business. I sell both  
21 real estate and personal property, but primarily I sell  
22 real estate. From the beginning of the process, I meet  
23 with potential sellers, talk with them about their  
24 property, look at their property and then engage in a  
25 contract with them to sell their property.

1           My clients include estates, banks, bankruptcy  
2 trustees, individuals, corporations, just a variety of  
3 type of clients and a variety of properties, everything  
4 ranging from assisted care facilities, undeveloped land,  
5 commercial properties, residential properties,  
6 industrial properties and then an occasional sale of  
7 cars and trucks and heavy equipment.

8           Q. You also mentioned in your job description that  
9 of an auctioneer. Is that also something you do?

10          A. Yes. Almost all of my sales are as an auctioneer  
11 of those properties. The real estate properties are  
12 sold through the auction process. I have probably one or  
13 two listings in a given year. 95 percent of my business  
14 is as an auctioneer.

15          Q. Is that something that you need a license for?

16          A. Yes, sir. I attended auctioneer school in  
17 Missouri, the Missouri Auction School, in 1997. Then I  
18 had to pass an exam there. Then I had to take a state  
19 licensure exam.

20          Q. Are you also an attorney as well?

21          A. Yes, sir, I am licensed in the State of Virginia.  
22 I clerked for a bankruptcy judge here in Roanoke in 1986  
23 and then I was in private practice as a litigator  
24 between 1987 and 1997.

25          Q. All tolled, your experience with real estate

1 would be how many years, approximately?

2 A. Well, I have a general understanding of real  
3 estate, obviously, as an attorney. I did not have a real  
4 estate practice except in the context of a couple of  
5 foreclosures and then in bankruptcy cases in which I was  
6 involved in relief and stay motions for the sale of  
7 property for bank clients. Also for some debtors in  
8 possession. So I had the ten years as an attorney and  
9 then eleven years as a real estate agent and auctioneer.  
10 I also have a brokers license in the State of Virginia  
11 to sell real estate.

12 Q. Now, at some point, were you hired to sell the  
13 Dogwood Farms property?

14 A. Yes, I was.

15 Q. Could you tell us who hired you and how that  
16 occurred?

17 A. When you say you, Woltz and Associates, the  
18 company for which I work, was hired. The contact was  
19 through me to the company. I spoke with Al McLean, who  
20 was counsel for Dogwood Farms in it's bankruptcy case,  
21 and he asked us to do a proposal for a debtor in  
22 possession sale. Then eventually what happened, through  
23 some agreements between counsel, as I understand it, it  
24 was a sale as a foreclosure sale for the substitute  
25 trustee that held the deed of trust on the property for

1 Gourley and Gourley.

2 Q. What role did Gourley and Gourley play then?

3 A. Gourley and Gourley actually negotiated the  
4 contract with Woltz. We entered a contract with them and  
5 as usual, there are all kinds of changes and request for  
6 changes in the auction contract because it was reviewed  
7 both by local counsel, which was Mark Black, and their  
8 counsel in northern Virginia, which was Mark Albert.  
9 Ultimately, they did sign off on that contract. Mark  
10 Black signed off on the contract.

11 THE COURT: I'll ask that you slow down a  
12 little for the Court Reporter.

13 THE WITNESS: We entered into the contract  
14 with Mark Black, who was the substitute trustee under  
15 the deed of trust, with Gourley and Gourley, to do the  
16 sale. However, we met with Mr. Farrier and Mr. Johnson  
17 to look at the property and they were aware that we were  
18 entering into this contract. That's how it progressed.

19 BY MR. BYBEE:

20 Q. Was the purpose of this sale to sell the property  
21 and take the proceeds and pay off the lien holdings?

22 A. Yes, sir.

23 Q. Now, let me direct your attention to -- first of  
24 all, tell me when the sale occurred.

25 A. The sale occurred on March 23rd -- let me get the

1 right year. I believe it was 2005.

2 Q. Now, did you --

3 A. Yes.

4 Q. Did you actually go out and see the property?

5 A. Many, many times. I spent a lot of time on the  
6 property. My initial visit to the property was with Jim  
7 Woltz, who was the owner of Woltz and Associates. We  
8 looked at the property with Mr. Johnson and Mr. Farrior,  
9 drove all over the property, got an explanation of the  
10 history of the property, potential development for the  
11 property and spent some time that day with them. Then  
12 of course I spent several days on the property with the  
13 surveyor. I was at the property showing the property,  
14 putting signs up on the property, putting brochure boxes  
15 on the property. I spent many hours on the property.

16 Q. Is this property in Giles County?

17 A. Yes, sir.

18 Q. Ms. McGraw, how are you yourself compensated in  
19 this whole process for your efforts?

20 A. We have a brokerage agreement for auction sales  
21 whereby our company receives 50 percent of the  
22 commission from the sale and then the agent receives  
23 50 percent of the commission from the sale. In this  
24 case, Jim Woltz and I were working on this project  
25 together. So I would have received 25 percent of the

1 commission from the sale and Jim would have received  
2 25 percent. That is based upon the sale price of the  
3 property. So it's a total of ten percent of the sale  
4 price, but then it gets split.

5 Q. Ten percent of the sale price is the commission?

6 A. Correct.

7 Q. That commission gets divided up between you, Mr.  
8 Woltz and?

9 A. Woltz and Associates.

10 Q. And someone else.

11 A. No, no. If this were my sale by myself, Woltz  
12 and Associates would get 50 percent and I would get  
13 50 percent. In this case, Jim Woltz was working on the  
14 sale as an agent, so 50 percent went to the company and  
15 50 percent went to the agents.

16 Q. The ten percent commission is the ten percent of  
17 whatever the land brings.

18 A. Correct.

19 Q. So the higher the sale price, the more your  
20 commission.

21 A. Yes.

22 Q. So you have a direct financial incentive to  
23 maximize the sale value of the land.

24 A. Absolutely.

25 Q. What happens if the land doesn't sell for enough

1 or doesn't bring the price to pay off the lienholders,  
2 et cetera? Do you have to foot any expenses?

3 A. Well, we need to split expenses versus  
4 commission. Before I get any commission, expenses have  
5 to be paid. So typically, we get the expenses up front  
6 in order to ensure that they get paid. If we went over  
7 the expense budget, then that would have to come out of  
8 my commission. So assuming all the expenses are paid,  
9 then I would get paid from a commission. If for some  
10 reason the property with a sale that had a confirmation  
11 price or minimum bid or foreclosure, if we didn't meet  
12 that amount, then either my contract would have to say I  
13 get paid ahead of creditors or my contract would say  
14 that I'm taking the risk of doing the selling without  
15 getting paid. Obviously, I prefer the first choice,  
16 getting paid.

17 The sale for this property did not provide for  
18 our company to get paid ahead of Gourley and Gourley.  
19 To my knowledge, at least in my career, I've only had a  
20 couple like that because typically, the banks know we're  
21 going to do our best and make a best effort and they're  
22 willing to pay us ahead of themselves. Gourley and  
23 Gourley was unwilling to do that. So in this case, had I  
24 not reached their number, then I would not have gotten a  
25 commission and if I had gone over budget on expenses, I



1 would have reimbursed Woltz and Associates for the  
2 overage. So I actually had a chance to lose money.

3 Q. Out of your own pocket.

4 A. Yes, sir.

5 Q. So that was another financial incentive to you.

6 A. Yes.

7 Q. Could I direct your attention, in your book --  
8 you should have an exhibit book there. The very first  
9 Exhibit is 41-1. Do you see that letter that, Ms.  
10 McGraw?

11 A. Yes.

12 Q. Do you recognize this letter?

13 A. Yes.

14 Q. What is this?

15 A. It's a letter that I sent to some real estate  
16 people. It was a reminder that we were going to be  
17 having the sale. It was sent about ten days before the  
18 sale. Wanted to let them know what a great property  
19 this was, encouraged them to come to the auction,  
20 letting them know the time that I could provide them  
21 with bidders packs, telling them where the sale was. It  
22 was a marketing piece I sent out just as a follow-up.

23 Q. Were you in charge of the marketing of this  
24 property?

25 A. Yes.

1 Q. What is your goal when you market a piece of  
2 property?

3 A. Well, to bring in as many people as possible in  
4 order to have competition, in order to get the highest  
5 price. You asked me earlier what my role is. My role is  
6 everything from procuring the contract, hiring a  
7 surveyor, walking the land, doing the subdivision,  
8 appearing before town or city councils or planning  
9 commissions, zoning issues, dealing with town officials,  
10 speaking on the phone with anyone who calls in,  
11 designing the sale brochure, doing all the due  
12 diligence, putting up the signs, picking up brochures.

13 Q. We get the drift.

14 A. Everything -- you say marketing. Yes, it was my  
15 job to do the marketing.

16 Q. All of that is designed for the purpose of  
17 maximizing the sale price.

18 A. Yes.

19 Q. That's the ultimate goal, is it not?

20 A. Yes.

21 Q. Now, about how many real estate agents did this  
22 go out to; do you know?

23 A. I honestly don't remember. I know I had someone  
24 go to the phone books and we sent it to real estate  
25 agents and also some investors that we knew.

1 Q. Did you also make up fliers or brochures to  
2 distribute?

3 A. Yes.

4 Q. Could I direct you to 41-2, please?

5 A. Yes.

6 Q. Is that the brochures or fliers you sent out?

7 A. Yes, it is.

8 Q. Where did these go? How did you distribute these?

9 A. These were distributed in a couple of ways.  
10 First, we sent them out to a mail list from our in-house  
11 mail list and then -- which includes about 750  
12 investors. Then we target buyers or people who  
13 registered at prior auctions that we think might be  
14 interested in this type of property. We may have chosen  
15 the developers, investors and people that attended sales  
16 in that area.

17 We also purchased a mail list of about 1500 --  
18 not about, it was 1586 names from a mail list service to  
19 which we subscribe and that would have included buyers  
20 like Wendy's and hotels and types of businesses that we  
21 thought might be interested in doing business  
22 development. Then we also purchased a list of real  
23 estate developers. There may have been some others, but  
24 those are the two I remember.

25 Q. Now, there's a back page to this, Mary. Do you

1 have the second page?

2 That's the reverse of this exhibit, Ms. McGraw?

3 A. Yes. Not only do we send to those mail lists, I  
4 went around Pearisburg and distributed them in like the  
5 library, in the town office, to real estate offices and  
6 then for people who called in for our Internet ads and  
7 from the newspaper ads. Those were mailed out as well.

8 Q. Quite a wide net was cast.

9 A. Yes.

10 Q. Now, if you could go back to the first -- well,  
11 let me move on. I'm going to come back to this exhibit  
12 in a few minutes. I want to stay on this one topic that  
13 we're on.

14 In addition to the brochures, did you also  
15 advertise in newspapers?

16 A. Yes.

17 Q. Could I direct you to 41-3, please?

18 A. Okay.

19 Q. What is this exhibit, Ms. McGraw?

20 A. This is an exhibit that shows where we advertise,  
21 the cost advertising. It's basically the production  
22 budget.

23 Q. Go right here, Mary.

24 A. With the 1586, that was the purchased mail list.  
25 We actually mailed out 3796 brochures from our mail

1 house.

2 Q. Did you advertise in these papers, Ms. McGraw?

3 A. Yes, we did.

4 Q. Some of them being Salem Times, News Messenger,  
5 et cetera, Roanoke Times, but you also advertised in the  
6 Wall Street Journal, Washington Post?

7 A. Yes.

8 Q. And several state newspapers?

9 A. Yes.

10 Q. Again, casting a wide net for as many people as  
11 you could reach?

12 A. Yes, and we did state-wide ads as well. The two  
13 that were down at the bottom, which go to about -- as of  
14 today, about 88 papers in Virginia. So we tried to hit  
15 some of the more expansive papers like Norfolk,  
16 Charlottesville, Richmond, through our state-wide ads.  
17 Running ads in all those papers, it would have been too  
18 expensive.

19 Q. Can I direct your attention to 41-4, please? Are  
20 these some of the ads you ran in these newspapers?

21 A. Yes, they are.

22 Q. This is another one. One more.

23 THE COURT: How much longer do you expect  
24 this to take?

25 MR. BYBEE: 20 minutes.

1 THE COURT: The jury's lunch is in. Let's  
2 go ahead and recess for one hour for lunch.

3 Is this your last witness?

4 MR. BYBEE: Yes, it is.

5 THE COURT: I hate to interrupt, but the  
6 jury has ordered it's lunch and it's probably arrived  
7 and this would be a good time to recess.

8 We'll recess for one hour for lunch.

9 (Recess at 12:15 p.m. until 1:15 p.m.)

10 (Jury returned to jury box).

11 THE COURT: If the witness would return to  
12 the stand.

13 BY MR. BYBEE:

14 Q. Ms. McGraw, when we broke for lunch, we were  
15 talking about newspaper ads that you had put in the  
16 paper to advertise the sale of Dogwood Farms. I'd like  
17 to continue on the same topic of your marketing efforts  
18 for the sale of the land.

19 Now, were there any open houses or visitors  
20 sessions where perspective bidders could come and look  
21 at the land?

22 A. Yes, there were. We had previews scheduled on  
23 March 9th and March 16th, from 12 to 3, and we held  
24 those at the Pearisburg Community Center, in Pearisburg,  
25 and also encouraged potential buyers to go walk the land

1 on their own.

2 Q. Mary, could you display Exhibit 41-5?

3 Is this somehow related to the visitors sessions  
4 you were just talking about?

5 A. No, this is not related to the open houses. The  
6 open houses, there's not a document regarding that in  
7 your materials, but we had about 13 or 14 people at the  
8 first one and we had, I believe, 9 or 10 at the second  
9 one. Those were people who actually signed in. There  
10 were some folks who chose not to sign in. Then there  
11 were, as I said, those that wanted to walk the  
12 properties on their own.

13 Q. What does this exhibit demonstrate? What  
14 information are you capturing here?

15 A. This is information regarding the people who  
16 actually went on our website, not just clicked for  
17 information, but actually went on and visited the  
18 website and looked at this information that was on our  
19 sale brochure. That was also on the website. The top  
20 shows people who visited from February 13th through  
21 February 19th. That number is, I believe, 182 actual  
22 interested parties who reviewed the information. Then  
23 the next column is 185 for the next week and then the  
24 next period, but this does not show the period of time  
25 through the sale date when we would have actually had

1 many more visitor sessions. I just put this is in the  
2 file. We don't always keep this. I happened to have  
3 this in the file and we could not go back and retrieve  
4 the later data because we switched systems.

5 Q. From your testimony, I take it you had a website  
6 that had -- what information -- was the brochure on it  
7 or what exactly was on the website?

8 A. The information would have been the sale brochure  
9 information. It may not have been set exactly like  
10 this, but it would have had the identical information in  
11 terms of the photograph and verbiage. But it would have  
12 been on the website a little differently because of a  
13 different program. I just don't remember, but the survey  
14 was probably on there. I don't remember.

15 Q. Now, in preparation for the sale, did you  
16 actually put together any kind of packet of information  
17 for perspective bidders?

18 A. Yes, we did.

19 Q. Can I direct your attention to 41-6?

20 A. Yes.

21 Q. Did you put this together, Ms. McGraw?

22 A. Yes, I did.

23 Q. Who was this directed to?

24 A. This was distributed to the bidders at the  
25 auction, but prior to the auction, we had something that



1 was pretty much identical. It was just entitled Primary  
2 Real Estate Bidder Packet. That was mailed out to  
3 anyone who called in the office and wanted one and also  
4 was handed out at the open houses.

5 Q. This packet has many, many pages to it, does it  
6 not?

7 A. Yes, it does.

8 Q. Could you please tell us what kinds of  
9 information you included in the bidder packet?

10 A. Sure; a copy of the sale brochure; a copy of the  
11 survey; a copy of the tax maps for all the property we  
12 sold; copies of all the tax assessor cards for the  
13 property we sold; copy for the zoning for all the  
14 properties; a copy of the title commitment we obtained  
15 from Lawyers Title regarding the title to the property,  
16 including any easements, liens, et cetera; and then the  
17 final two documents would have been real estate purchase  
18 agreement that the buyer or buyers would need to sign on  
19 sale day; and the final document is the notice of sale  
20 that was prepared by the substitute trustee and his  
21 memorandum of sale.

22 Q. Now, were any of the information that we've  
23 talked about, either the bidder packets or the brochures  
24 or any other fliers or marketing material, were any sent  
25 to the adjoining landowners of the property?

1       A.   Yes, we pulled the tax map and identified each  
2   adjoining property owner, got their address and mailed  
3   them a brochure for the sale.

4       Q.   Now, let me talk to you for a minute, Ms. McGraw,  
5   about auction sales, generally. As an auctioneer, does  
6   the auction price or the sale of the property when you  
7   auction it off, is it always lower than the price that  
8   the land is listed for?

9       A.   No.

10      Q.   Sometimes, is it higher?

11      A.   Yes.

12      Q.   Now, when you're deciding the best way to sell a  
13   piece of land that has many, many acres, such as this  
14   one, do you have any software or any other tools like  
15   that to help you decide what the best distribution of  
16   the parcels is?

17      A.   Yes. We start with the property as a whole and  
18   look at it. We look at issues of the matter of road  
19   frontage to determine what kinds of subdivisions you  
20   might be able to do with the whole property. You have  
21   to look at how many tax parcels of property is currently  
22   identified in. You may have one tax parcel. You may  
23   have ten tax parcels. The more tax parcels, the better  
24   you are because you can do some adjustments among those  
25   parcels to create divisions that might be more

1 marketable. We do topographical mapping. We work with a  
2 surveyor and Jim Woltz has been dividing and subdividing  
3 land for about 30 years. He's an expert and works with  
4 us in determining the best way to subdivide the  
5 property.

6 Q. In fact, did you come up with a system or way to  
7 subdivide the property?

8 A. Yes, we did.

9 Q. How many tracts of land did you come up with?

10 A. We did 12 tracts of land starting with, I  
11 believe, four tax parcels.

12 Q. Mary, could you bring up 42-2, I believe? Could  
13 you zoom in on this picture right here?

14 Ms. McGraw, do you see what's highlighted on the  
15 screen?

16 A. Yes.

17 Q. What's in your monitor would be a better view of  
18 it, I guess.

19 A. Yes.

20 Q. Does this represent the dividing up of land?

21 A. Yes, it does.

22 Q. Could you just discuss this generally, what it is  
23 and what we're looking at?

24 A. Sure. We looked at the property and were able,  
25 because some of the property had access from streets, we

1 were able to create a lot more tracts like along 8  
2 through 11 because you can have access from -- road  
3 frontage from those streets. Likewise, tract 6 had some  
4 road frontage we could get through. Tract 1, we had a  
5 little way we could get in there so we made a tract  
6 there. Then we actually were able to create a right of  
7 way from 1 through 2 to tract 4, to get access to tract  
8 four.

9 So we looked at trying to create as many  
10 subdivisions as were reasonable, not to get as many lots  
11 as were possible, but to create lots that would be  
12 valuable to a lot of people, whether they be residential  
13 buyers, commercial buyers.

14 Q. This box in the right-hand corner, does that list  
15 the number of tracts with the approximate acreage for  
16 each contract?

17 A. Yes, it does.

18 Q. And this was all designed to get the most value  
19 for the land?

20 A. That's correct.

21 Q. Let's talk about the actual sale, Ms. McGraw.  
22 Could you tell us where it was and how you actually go  
23 about the sale of the land?

24 A. Yes. The sale was held in Pearisburg, pretty  
25 close to the property, in the community center. We

1 start registration about an hour before. We display  
2 large copies of the survey. We have all the due  
3 diligence materials available. We register bidders.  
4 Then we do announcements. They may take 10 minutes,  
5 15 minutes. We do go through the entire bidder pack with  
6 the audience. Then we sell a country ham in order to get  
7 rapport with the audience, have them get used to the  
8 auctioneer's voice, have them feel comfortable with the  
9 bidding. Then we start with the auction.

10 Q. Let me back up. Does the auctioneer auction off  
11 a ham?

12 A. We do.

13 Q. And this is to kind of get them in the mood to  
14 bid?

15 A. Correct. Then what we do is after the bidding is  
16 over, we then tell the winner if it's not over \$75,  
17 we're going to give you the ham for participating and  
18 that's the last thing that you get for free because now  
19 we're selling valuable real estate, and then we just  
20 launch into the auction.

21 We do a system different from a lot of other  
22 auction companies and it's proved to be very, very  
23 successful when you have multi parcel buildings. We put  
24 boards up that have each of the tracts, in this case, 1  
25 through 12. Unlike a typical auction, we post bids so

1 when someone bids on tract 1, we post their bid. They  
2 don't win it. We post it. We go through all 12 tracts  
3 posting the bids. Then we say "does anyone want a  
4 group?" You could group 1 through 12, as long as it's  
5 more than the 12 individually. You can put 1 and 2  
6 together, 1 through 6, 7 through 12. It's the ultimate  
7 flexibility for buyers. If you're one guy that wants to  
8 bid one house, you keep bidding as much as you want on  
9 your one tract. If you're a developer that wants  
10 commercial, you put those tracts together.

11 We go through this process until we sell the  
12 property in the highest amounts, whatever the  
13 permutation is, whether it's twelve bidders or one  
14 bidder. Everybody gets a chance.

15 We divide the room up. We have bidder receivers  
16 in each section. We have a rapport with the bidder. If  
17 someone has bid on 1 through 12 and they post that every  
18 individual or group that's winning, we go through and  
19 say, "hey, you're out, you need to bid more." We keep  
20 working the crowd until it slows down and then we put a  
21 two-minute clock on it and say, "if nothing sells in two  
22 minutes, then the price is there." That encourages the  
23 people sitting back to bid because now we're going to  
24 move forward.

25 With this sale, we actually announced at the time

1 we had met the minimum bid in order to encourage more  
2 bidding at that point.

3 Q. Do you have people helping you do this?

4 A. Yes, sir.

5 Q. How many people did you have?

6 A. I think we had about nine people that day.

7 Q. Is that who you're referring to as bid receivers?

8 A. Yes.

9 Q. Their job is to walk around the crowd and whip  
10 them up?

11 A. I wouldn't say that. We would encourage them to,  
12 say, bid the highest amount they're going to bid. We  
13 don't beat up on them. We encourage them to buy.

14 Q. How many people attended? How many people came?

15 A. My recollection, and again it's been since 2005,  
16 the room was pretty full. I would say that there were  
17 at least 100 people there, at least. We had 59  
18 registered bidders. Usually, a bidder doesn't come  
19 alone. They have someone with them, a spouse or  
20 business partner. I know we had well in excess of 59.

21 Q. How many people actually bid on the property?

22 A. I would have to go back and check. I don't know  
23 how many individual people actually bid. I could look  
24 and tell you, but we had 59 registered bidders.

25 Q. A registered bidder is -- what makes a bidder

1 registered?

2 A. Someone who comes in, gives us the driver's  
3 license. We take all the personal information and  
4 they're given a bidder card. You cannot bid unless you  
5 have a bidder card.

6 Q. Let me direct you to 41-7.

7 A. I can tell you we had 103 bids during the  
8 process, but I don't know how many of those were repeat  
9 bidders, without looking at records.

10 Q. Is this a bidder card?

11 A. Yes, it is.

12 Q. They fill out their name and address and give you  
13 the driver's license.

14 A. We fill it out for them. We take their driver's  
15 license and we actually complete it for them.

16 Q. I'm sorry. How many bids were there?

17 A. 103.

18 Q. Now, at the end of this process, how many actual  
19 purchasers were there? How many bids won and actually  
20 purchased property?

21 A. There were four successful bidders. It sold to  
22 four different bidders.

23 Q. So were all 12 tracts of land sold?

24 A. Yes.

25 Q. Those 12 tracts of land went to four separate



1 individuals?

2 A. Individuals or entities. Some were LLC's, but  
3 four buyers.

4 Q. Some of the tracts of land were combined and some  
5 weren't?

6 A. Correct.

7 Q. Could I have you turn to 41-10? Are you required  
8 to fill out what's known as a HUD 1 or a settlement  
9 statement?

10 A. The closing attorney or settlement agent does  
11 that. We do need to fill those out. We provide  
12 information from the sale to the closing attorney or  
13 settlement agent.

14 Q. Do you also get copies of these?

15 A. We do.

16 Q. The information that you provide -- what  
17 information do you provide to the settlement attorney?

18 A. A copy of the contract and in the letter when I  
19 send it, I tell them we're holding a deposit of X amount  
20 of dollars.

21 Q. So the settlement attorney takes the information  
22 you give them and puts that on the HUD 1?

23 A. Right. If we are owed any money for expenses, we  
24 would also give that information to the closing attorney  
25 or settlement agent.

1 Q. Now, if you could highlight maybe this top part  
2 right here and zoom in a little bit?

3 Do you recognize this form, Ms. McGraw?

4 A. Yes, I do.

5 Q. The property location, does this represent what  
6 property was sold to that bidder?

7 A. Yes, parcels 1, 2, 3 and 4.

8 Q. Those four parcels were combined into one and he  
9 bid -- is the sales price right here?

10 A. Yes.

11 Q. So whoever this is bought four parcels and paid  
12 \$711,900, am I right?

13 A. Yes.

14 Q. Could I direct your attention to 41-11, please?

15 Is this the second HUD 1 from that sale?

16 A. Yes, it is.

17 Q. They bought parcels 5 and 11, is that right?

18 A. Correct.

19 Q. They paid \$84,000?

20 A. Yes.

21 Q. Would you go to 41-12, please?

22 Did the third buyer buy these parcels?

23 A. Yes; 6, 7, 8, 9 and 12.

24 Q. And paid 472,500 for them?

25 A. Yes.

1 Q. And the fourth bidder bought just one parcel.

2 A. Correct.

3 Q. And paid 54,6 for it.

4 A. Yes.

5 Q. Now, I'm going to ask you to display  
6 Exhibit 41-9.

7 Is this the trustees report of sale, Ms. McGraw?

8 A. I recognize it as Mark Black's signature and he's  
9 substitute trustee. Mr. Black never gave me this. It  
10 appears to be, yes.

11 Q. Let's go to the second page, please.

12 This substitute trustee, Mark Black, you  
13 recognize that as Mark Black's signature?

14 A. Yes. I've had lots of correspondence from him,  
15 yes.

16 Q. Was he, in fact, the substitute trustee?

17 A. Yes, he was.

18 Q. Could you go back to the first page?

19 Does that figure, 1,323,000, does that represent  
20 the sum of those four bids that you received?

21 A. It represents the sale price, just to clarify.  
22 We get a bid amount. We add a five percent buyers  
23 premium to create the contract price. This number  
24 represents the total that was paid for the property.

25 Q. All four tracts together?

1 A. Correct, correct.

2 Q. The trustee is responsible for disbursing that  
3 money out to the right parties?

4 A. That's correct.

5 Q. Did Gourley and Gourley get paid?

6 A. The HUD 1 says they did and this says they did,  
7 but I have no personal knowledge that they did. I assume  
8 they did or we would have heard about it by now.

9 Q. Would you go to the second page?

10 After Gourley got paid, was some money paid to a  
11 second lienholder?

12 A. I have no personal knowledge of that, but I have  
13 no reason to believe that didn't happen, based upon this  
14 document.

15 Q. How long does the sale take?

16 A. We started right around 12:00. We did the  
17 announcements and sold the ham. We sold the properties  
18 and the print-out that was done immediately at the end  
19 of the sale was at 2:46. So the sale took approximately  
20 2 hours 45 minutes, start to finish.

21 Q. Was this a fairly drawn-out process?

22 A. Yes, it is.

23 Q. Let me direct you to -- are you familiar with the  
24 way the expenses were paid in this particular instance?

25 A. Our expenses?

1 Q. How the money, what money was used to pay those  
2 expenses and whether any money was paid back to anyone?

3 A. Yes. We would not go forward with the sale  
4 unless we had some expense money to cover the expenses.  
5 Al McCain, who was counsel for the Dogwood Farms, sent  
6 us a check in the amount of \$30,000 to hold to cover the  
7 expenses if there weren't enough funds from the proceeds  
8 to pay our expenses. Mr. McLean told me that those  
9 funds had come from the second deed of trust holder.

10 Q. Would you display 41-14, please?

11 Did you receive this letter, Ms. McGraw?

12 A. Yes, I did.

13 Q. Who's it from?

14 A. It's from Mark Black.

15 Q. You recognize that as Mr. Black's signature?

16 A. Yes.

17 Q. Does this letter memorialize the testimony that  
18 you've just given us, that \$30,000 came from the second  
19 lienholder?

20 A. Mr. Black said so and Mr. McLean said so, but I  
21 wanted them both to tell me that in writing and then I  
22 would return the 30,000.

23 Q. In other words, you weren't going to return  
24 30,000 just on a verbal say-so?

25 A. No, no.

1 Q. Did you, in fact, return the 30,000?

2 A. I did.

3 Q. Could I go to 41-15, please? Do you recognize  
4 this letter, Ms. McGraw?

5 A. Yes. This is a letter from me to Al McLean. He  
6 had asked me to write the check to Ms. Neville rather  
7 than to his office, which I did, copying Mark Black on  
8 it and then sent the check for \$30,000 to Mr. McLean.

9 Q. Is this, in fact, that check?

10 A. Yes, it is.

11 Q. You made this out to the order of Patricia  
12 Neville?

13 A. Yes, based upon Mr. McLean's instructions and Mr.  
14 Black's.

15 Q. Would you go to Exhibit 41-16, page three,  
16 please? Have you seen this check before, Ms. McGraw?  
17 Are you familiar with check, 25,923, to Patricia  
18 Neville?

19 A. No, sir, I'm sorry, I'm not.

20 Q. Does this figure, 25,923, does that match the  
21 disbursement listed by Mr. Black in his trustee's report  
22 of sale, which is Exhibit 41-9?

23 A. Yes, it does.

24 Q. If we could go to Exhibit 41-17, please.

25 A. If you could give me a second. It may be on the

1 settlement statement. There is a reference on one of  
2 the settlement statements for 23,977. That's close, but  
3 I don't see anything that says it went to Ms. Neville.  
4 Sorry.

5 Q. Do you recognize 41-17?

6 A. Yes.

7 Q. Does this summarize your expenses and  
8 reimbursements from the sale of the land?

9 A. Yes, commission and expenses, yes.

10 Q. Exhibit 41-18, there is a series of four checks.  
11 Are those checks paid to you as part of your commission?

12 A. These were the deposit checks for each of the  
13 four sales and we put those checks into our escrow  
14 account. The deposits were ten percent of the sale  
15 price. Our commission is ten percent of the sale price.  
16 We leave those in our escrow account until after each of  
17 the closings occur. As I said in my letter to Ms. Reed,  
18 once we knew the transactions had closed and the deeds  
19 had been recorded, then we would transfer those amounts  
20 from our escrow account to our operating account for our  
21 commissions.

22 Q. Now, would you please turn to Exhibit 41-19?

23 A. Yes.

24 Q. Do you recognize that exhibit?

25 A. Yes. This is the print-out that I mentioned a

1 while ago. This one was has a slightly later date  
2 because we -- time rather. We print three of them and  
3 it's a couple minutes longer than referenced. This was  
4 printed at 14:49, which was 2:49 p.m. It shows how the  
5 property ultimately sold. Tracts 1 through 4 sold  
6 together for a total of \$711,900. Tracts 5 and 11  
7 together, for 84,000. Tracts 6, 7, 8 and 9, plus 12,  
8 472,500. And then tract 10, for 404,600, for the total  
9 of 1,323,000.

10 Q. Now for dividing up this land into these lots,  
11 did Mr. Johnson have any input into that?

12 A. I remember speaking with him at the beginning of  
13 the process about our getting together and coming up  
14 with what we thought was the best subdivision. He talked  
15 about some of the ideas he had about marketing the  
16 property. The surveyor worked with us to actually lay  
17 out the subdivision. Mr. Johnson never expressed any  
18 dissatisfaction with the way we had done it and he  
19 signed on the surveyor as the owner, he and his wife.

20 Q. Ms. McGraw, is it your belief that you did  
21 everything you could to maximize the sale of the land?

22 A. Yes.

23 MR. ANDERSON: Objection, relevance.

24 THE COURT: Overruled.

25 BY MR. BYBEE:



1 Q. And you believe you got the best price you could?

2 A. Yes.

3 MR. BYBEE: No further questions for this  
4 witness.

5 THE COURT: Mr. Anderson.

6 MR. BYBEE: Your Honor, I move to admit  
7 Government's Exhibit 41-1 through 41-19.

8 THE COURT: Received.

9 (Government Exhibits 41-1 through 41-19).

10 CROSS-EXAMINATION

11 BY MR. ANDERSON:

12 Q. Good afternoon, Ms. McGraw.

13 A. Good afternoon.

14 Q. I notice you talk a lot faster now than you did  
15 when you were a litigator.

16 A. I'm an auctioneer.

17 Q. You became involved with Dogwood Farms through --  
18 did I understand, through a connection from Mr. Al  
19 McLean?

20 A. Al McLean called me and asked me to take a look  
21 at the property for Dogwood Farms.

22 Q. Did you do that?

23 A. Jim Woltz and I did that, yes.

24 Q. After that time, did I understand you to say that  
25 you took over for Gourley and Gourley or became employed

1 by Gourley and Gourley?

2 A. Gourley and Gourley got relief from stay in the  
3 Bankruptcy Court to do a foreclosure and they were going  
4 to proceed with a foreclosure. Mr. McClain recommended  
5 to Dogwood that we be used for Gourley and Gourley  
6 because of our marketing and because of our multi parcel  
7 bidding process.

8 Q. Let's go back just a little. When Mr. McLean  
9 contacted you about you and Mr. Woltz taking a look at  
10 the property, that was as counsel for Dogwood Farms; is  
11 that correct?

12 A. Yes, he was counsel for Dogwood Farms.

13 Q. When you did that, did you give Mr. McLean an  
14 estimate as to what you believe -- when I say you, you  
15 and your auction company -- could sell this parcel known  
16 as Dogwood Farms?

17 A. Not before we looked at it. We went and looked at  
18 the property and as we tell every client, you don't know  
19 what you're going to get at an auction. It depends on  
20 how many people come. We're going to auction the best  
21 we can. We're going to get what we think is a fair  
22 market price for what we have to offer at auction. We  
23 did not think we were going to achieve the appraised  
24 value after we looked at it.

25 Q. Did you believe the appraised value at that time

1 to be 2.1 million?

2 A. Yes, I was given the cover sheet of that.

3 Q. That was based on the appraisal done by Mr.  
4 Derrier?

5 A. Yes.

6 Q. And Mr. Derrier has MAI after his name. Do you  
7 know what those three letters stand for?

8 A. I believe it's Member Appraisal Institute.

9 Q. After you looked at that appraisal, do you  
10 understand that that appraisal considered what the value  
11 of the land was in 2001 as one tract or the two large  
12 tracts of land together, rather than divided into 12  
13 individual lots?

14 A. He did not actually appraise it that way. He  
15 broke it down into the industrial, the commercial and  
16 the residential and he appraised each of the types of  
17 properties separately and put different values upon each  
18 of the types.

19 Q. But that wasn't broken into the 12 lots that  
20 ultimately your company divided?

21 A. No, not into our 12 lots, no.

22 Q. When you started about to market the property,  
23 did you learn that this property was considered by many  
24 to be most valuable tract of land in Giles County?

25 A. No, it was the only remaining vacant large parcel

1 in the Town of Pearisburg.

2 Q. Did that mean it had more value or less value?

3 A. It had more value in the Town of Pearisburg. I  
4 don't know if it has more value in the county of Giles  
5 County. I don't know that.

6 Q. Are you aware of what's happened to the real  
7 estate since it was sold?

8 A. No.

9 Q. You're not familiar with Carilion purchasing it  
10 and putting a hospital on it?

11 A. No.

12 Q. After you spoke with Mr. McLean, you had this  
13 meeting with him to try to develop a value of Dogwood  
14 Farms. You mentioned that the Gourley and Gourley got  
15 relief from the stay. How did that occur?

16 A. I don't know. I wasn't a party to that.

17 Q. Do you know whether the trustee in bankruptcy had  
18 to abandon it's interest in that property so Gourley and  
19 Gourley could go forward with the sale of the property?

20 A. I recall seeing something in my file at one point  
21 from Mr. McLean saying that the trustee was going to  
22 reserve the right. He didn't want to proceed with the  
23 sale of it himself because he didn't want to take the  
24 risk in case it didn't bring enough to pay off  
25 creditors, but he was going to wait to abandon it until

1 later in the process.

2 Q. So after you had these conversations with Mr.  
3 McLean, your firm becomes employed on behalf of Gourley  
4 and Gourley, who's the first lienholder?

5 A. I wouldn't say we had conversations with Mr.  
6 McLean. My conversations were with Mr. Johnson and Mr.  
7 Farrier.

8 Q. After those conversations, did your firm become  
9 engaged by Gourley and Gourley?

10 A. Yes.

11 Q. And that's who you entered into the contract with  
12 to conduct the ultimate sale of this property?

13 A. That's right, with input from Dogwood Farms.

14 Q. And the input from Dogwood Farms came from Mr.  
15 Johnson and Mr. Farrier?

16 A. Correct.

17 Q. And you now are doing your advertising, when you  
18 start out in earnest, is it fair to say, that you're  
19 working for the first lienholder of the property on  
20 Dogwood Farms?

21 A. Yes.

22 Q. And you knew the extent of their interest to be  
23 approximately 875, 825,000?

24 A. That's what I thought initially, yes.

25 Q. Did you ever learn that was incorrect?

1       A.   Yes -- well, it may have been initially, but the  
2   expenses just kept going up.

3       Q.   From Gourley and Gourley?

4       A.   Correct.

5       Q.   Late fees?

6       A.   Yes.

7       Q.   Interest due?

8       A.   Yes.

9       Q.   All the types of charges, in your experience,  
10   that are typically related to foreclosure sales.

11      A.   I wouldn't say that they're typical. The  
12   attorney's fees and the first pay-off, which was in the  
13   exhibits that we went over, it went up \$100,000 in a  
14   couple months.

15      Q.   Most of that was interest and late fees, wasn't  
16   it?

17      A.   The interest was \$15,000 a month.

18      Q.   Late fees?

19      A.   The late fees, they were not accelerating because  
20   I think the bankruptcy, for some reason they didn't keep  
21   accelerating that amount.

22      Q.   40-some thousand in late fees.

23      A.   Yes.

24      Q.   When you're in a foreclosure sale situation, it's  
25   usually because the borrower has defaulted on the terms

1 of the note.

2 A. Yes.

3 Q. So there's some delinquency involved.

4 A. Yes.

5 Q. When delinquencies are involved, interest and  
6 expenses occur.

7 A. Correct.

8 Q. When you have a foreclosure sale, typically,  
9 those are included in the trustee sale as part of the  
10 trustee's expenses and they are recovered from the sale  
11 price.

12 A. Yes.

13 Q. Now, in this particular case, you become engaged  
14 by Gourley and Gourley to sell this tract of real estate  
15 that they have the first lien on.

16 A. Yes, yes.

17 Q. And you are trying to maximize the cost or the  
18 sale price of that property, to the extent it takes care  
19 of your client as first lienholder and to the extent you  
20 record the highest number you can for your own financial  
21 interests?

22 A. I try to get the highest price I can for the  
23 property for everyone involved.

24 Q. In this particular case, did you have a minimum  
25 bid requirement?

1       A. We did not have a minimum bid requirement in  
2 terms of just a confirmation type sale, but any time  
3 there's a foreclosure, the secured creditor will have an  
4 amount that they intend to bid. That amount would be  
5 conveyed from the secured creditor to the substitute  
6 trustee. I was made aware of that right before the  
7 sale, right before the sale.

8       Q. Let me make sure I understand that and the jury  
9 understands that.

10           Are you saying that the secured creditor, in this  
11 case, Gourley and Gourley, has told the substitute  
12 trustee, in this case, Mr. Black, what they will accept  
13 as a minimum bid for this property?

14       A. That's what they told -- that was the print-out I  
15 got before the sale. Sometimes a secured creditor will  
16 change their mind depending on how bidding goes and that  
17 sort of thing, but this was the number we were working  
18 from.

19       Q. That number known to the substitute trustee, Mr.  
20 Black, is made known to you before the sale.

21       A. Yes, yes, it was.

22       Q. And you want to make sure that you at least -- I  
23 won't say, whipped them up, but at least get the price  
24 up to that minimum bid.

25       A. Yes. I mean, we want to get the most.



1 Q. It's only obvious.

2 A. Yes.

3 Q. In this particular advertisements that were used  
4 for the sale of this property, I saw the word absolute  
5 auction.

6 A. Yes.

7 Q. Could you relate to the ladies and gentlemen of  
8 the jury what absolute auction means in that context?

9 A. Sure. Some folks advertise a foreclosure auction  
10 with a banner at the top that says foreclosure. We have  
11 found that if you use the term foreclosure auction,  
12 sometimes people think they're going to get a bargain.  
13 We spoke with Mr. Johnson and he asked if we would not  
14 use the word foreclosure in the heading because of the  
15 negative connotations and that was not a problem for us,  
16 as long as we put in our terms and conditions that it is  
17 a substitute trustee sale, which we did.

18 An absolute auction means the property will  
19 transfer title to a third party. In this case, Mark  
20 Black was the trustee. If in fact a bid was placed by  
21 Gourley and Gourley, Gourley and Gourley would then be  
22 the owner if no one else bid more and they would take  
23 title as a third party, meaning that it went to the  
24 highest bidder, whether it was Gourley and Gourley or  
25 any of these other bidders.

1 Q. That's what happened at the bid, third party bid.  
2 They got to the minimum bid, you knocked it down and  
3 said sale?

4 A. No, no, no. We got to the minimum bid and then  
5 we announced, it's going to sell now. If you've been  
6 sitting back waiting to bid wondering how much you're  
7 going to have to bid, now is your time. It's going to  
8 sell today. We used the minimum bid as a way to  
9 encourage bidding. We didn't slam the hammer down as  
10 soon as we got there.

11 Q. What you said was, we've now reached the point  
12 where we can sell this property and if anybody out there  
13 wants to buy or bid, now is the time or forever hold  
14 your peace?

15 A. What we said is the secured creditor will not be  
16 bidding.

17 Q. In your experience as an auctioneer, when you  
18 have these type of foreclosure sales, do the distressed  
19 sales bring same, equal or lower prices?

20 A. Sometimes more, sometimes less. I have actually  
21 gotten for one property that had an assessed value of  
22 35,000 or 38,000, I got 135,000. I've had other sales  
23 where you have an appraised or assessed value of 500 and  
24 you get 400. It goes both ways.

25 Q. Based on your experience with this type of

1 property and this tract size, would you say the interest  
2 in this property was keen, not many people interested at  
3 all or is it about average?

4 A. I'd say we had, with it subdivided, it was about  
5 average. If it had been sold as one tract, I don't  
6 think we would have had nearly the interest.

7 Q. Was it known or was it made known to the people,  
8 other than the term absolute auction, was it made known  
9 at this particular auction sale that this was an auction  
10 being conducted on behalf of the secured creditor?

11 A. Yes, it's in the terms and conditions on the back  
12 of the brochure, paragraph seven, and then our  
13 announcements also indicated that it was a foreclosure  
14 auction and Mr. Black had to read his notice, as  
15 required by law.

16 Q. Mr. Black was the substitute trustee?

17 A. Yes.

18 Q. Had to read the foreclosure notice at the  
19 auction, required by Virginia statute.

20 A. Yes.

21 MR. ANDERSON: Thank you. That's all.

22 MR. BYBEE: No questions.

23 THE COURT: You may step down, ma'am.

24 Any other evidence?

25 MS. WAERING: Your Honor, we need to clarify

1 some exhibits being admitted before we actually say the  
2 word rest, but we have no other witnesses. We just need  
3 to clarify some exhibits.

4 THE COURT: All right. Let's clarify them.

5 MS. WAERING: There's an Exhibit 42 that's a  
6 stipulation regarding testimony of custodian of records  
7 that allowed the records without the --

8 THE COURT: It's received.

9 MS. WAERING: Exhibit 43, which is the  
10 stipulation of the testimony of Terry Montgomery who  
11 gathered the trading records for us as to the trade  
12 record authenticity.

13 THE COURT: It's received.

14 MS. WAERING: Exhibit 44, which is the  
15 stipulation testimony of Joe Hower and he is the IRS  
16 individual who took the search warrant bank records and  
17 put them in a spread sheet form. I believe that is also  
18 Exhibit 51, which is admitted by stipulation.

19 THE COURT: Received.

20 MS. WAERING: Exhibit 45, that is a  
21 stipulation as to the authentication of the search  
22 warrant documents and they've been mentioned several  
23 times throughout this case.

24 THE COURT: Received.

25 MS. WAERING: There is Exhibit 47 is Richard

1 Lee and he is the examiner of the computers that were  
2 taken during the search at Mr. Johnson's residence. I  
3 believe there are some exhibits attached to that, 17-1  
4 through 17-5 that are admitted by stipulation.

5 THE COURT: Received.

6 MS. WAERING: Exhibit 46 is a stipulation  
7 that says that the National Bank of Blacksburg has it's  
8 deposits insured by the Federal Deposit Insurance  
9 Corporation and their deposits and withdrawals are  
10 subject to federal regulations and have an effect on  
11 that interstate commerce and that the checks both to and  
12 from Mountain Investments, Dogwood Farms, Ted Johnson  
13 and Frank Farrier accounts at the National Bank of  
14 Blacksburg and deposits and withdrawals that affect  
15 interstate commerce. That's Exhibit 46.

16 (Mr. Bybee conferred with Ms. Waering).

17 That is Exhibit 46, Your Honor.

18 THE COURT: Received.

19 MS. WAERING: Exhibit 5-26 is the Interstate  
20 Commerce Corporation Commission documents that were in  
21 the Frank Farrier notebook. They were documents taken  
22 from the search warrant.

23 THE COURT: Received.

24 MS. WAERING: Then 5-28, 5-2 and 5-30 were  
25 documents taken by Mr. Johnson's computer and were in

1 the notebook and they were the security carrier deeds of  
2 trust.

3 THE COURT: Received.

4 MS. WAERING: In the Thomas Buchanan  
5 notebook, I believe we may have asked for them to be  
6 admitted, but just to be sure, this notebook contains  
7 both Exhibits 24-1 to 24-5 and 25-1 to 25-5. I wanted  
8 to make sure all those are in. Those are all related to  
9 the investments of Thomas and Kimberly Buchanan.

10 THE COURT: If there are no objections,  
11 they'll be received.

12 MR. ANDERSON: None, Your Honor.

13 MS. WAERING: 51-1 through 51-5, but those  
14 are part of the Joseph Howard stipulation.

15 THE COURT: Received.

16 MR. BYBEE: Your Honor, the Richard Lee  
17 stipulation originally contemplated Exhibit 17H, 1  
18 through 5. We actually did not enter those. We  
19 renumbered them and reduced them to three. Those  
20 records are actually Exhibit 5-28, 5-29 and 5-30. I  
21 don't believe there are any exhibits numbered 17, 1  
22 through 5. Those are the records that belong to the  
23 Richard Lee stipulation.

24 THE COURT: Mr. Anderson, are you in  
25 agreement?

1 MR. ANDERSON: I am in agreement.

2 THE COURT: They're received.

3 MS. WAERING: Your Honor, that completes, I  
4 believe, everything. There are some exhibits attached  
5 in these notebooks that are duplicates of the link  
6 charts that are 62 dash something, but they are clearly,  
7 I believe, understood as being admitted in the 62  
8 series. If the record doesn't show them being  
9 particularly in the --

10 THE COURT: I notice they're in various  
11 notebooks.

12 MS. WAERING: Yes, Your Honor. They're  
13 duplicates in the witness notebooks.

14 With that, we ask those exhibits be admitted  
15 and the government rests, Your Honor.

16 THE COURT: They're received.

17 (Government Exhibits 42-47; 5-26 through  
18 5-30; and 51-1 through 51-5 were admitted into  
19 evidence).

20 Ladies and gentlemen, for your purposes,  
21 this will be an appropriate time for you to adjourn for  
22 the day.

23 I'm going to ask that you -- it's vital that  
24 you remember all the instructions you've been given.  
25 You're going to be gone over a long weekend. You're not

1 to read anything about it or listen to anything about  
2 it. I don't know whether there will be any news  
3 accounts, but it's important that you not listen to  
4 those things in any way.

5 With that in mind, I'm going to release you  
6 until 10:30 on Tuesday morning. You have a good long  
7 holiday weekend. For those of you who are actually  
8 going to be off on Monday, we'll see you back here on  
9 Tuesday morning at 10:30.

10 Have a good weekend.

11 (Jury left courtroom).

12 Rather than hear your motion at this time,  
13 why don't we wait until 9:00 a.m. on Tuesday? Is that  
14 all right? I know you have some motions to make.

15 MR. ANDERSON: Judge, I do, and that's fine  
16 with us to do that.

17 I have just a little written memorandum.  
18 I'll give a copy to the government that would be in  
19 support of the motions. I think it's probably  
20 self-explanatory. On Monday, it will reduce the time  
21 I'm standing at the podium arguing this.

22 THE COURT: On Tuesday.

23 Thank you. We'll receive your written  
24 submission and it will give us an opportunity to review  
25 it.



1           If there are any other jury instructions  
2   that y'all would like to offer me now so I can at least  
3   have them over the weekend, I would appreciate receiving  
4   them, if there are any additional jury instructions so  
5   that I'll have them.

6           MS. WAERING: Did Your Honor get the copy --

7           THE COURT: I did. If there's anything  
8   else, I just ask that you submit it.

9           MS. WAERING: Your Honor, we do have an  
10   updated count chart that we would like to give to the  
11   Court. We've given a copy to the defense. We're going  
12   to be updating this for Monday as well, but we have  
13   listed the bare minimum of the exhibits that go to these  
14   particular counts. We'll be fleshing that out some  
15   before Monday.

16          THE COURT: I will be taking all these  
17   matters up with you at 9:00 a.m. on Tuesday morning.

18          If there's nothing further at this time, we  
19   will stand in adjournment.

20          (Proceedings adjourned).  
21  
22  
23  
24  
25

INDEXWITNESS FOR GOVT.

Danny Taylor

Direct Examination by Mr. Bybee.....13  
 Cross-Examination by Mr. Anderson.....43

David Frye

Direct Examination by Mr. Bybee.....49  
 Cross-Examination by Mr. Anderson.....63

Joanna McGraw

Direct Examination by Mr. Bybee.....66  
 Cross-Examination by Mr. Anderson.....97

EXHIBIT NO.MarkedAdmitted

Govt. 26-1 - 26-7	43	43
Govt. 26-9 - 26-11	43	43
Govt. 26-13 - 26-16	43	43
Govt. 6-3 - 6-5	63	63
Govt. 54-2	63	63
Govt. 56-1 - 56-7	63	63
Govt. 41-1 - 41-19	97	97
Govt. 42-47	111	111
Govt. 5-26 - 5-30	111	111
Govt. 51-1 - 51-5	111	111

"I certify that the foregoing is a correct transcript  
 from the record of proceedings in the above-entitled  
 matter.

/s/ Sonia Ferris

June 23, 2009